

The Gazette of India



EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

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LOK SABHA

The following Bills were introduced in Lok Sabha on the 26th November, 1963:—

BILL No. 45 OF 1963

a Bill to provide for the establishment of a Corporation with a view to encouraging saving and investment and participation in the income, profits and gains accruing to the Corporation from the acquisition, holding, management and disposal of securities.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Unit Trust of India Act, 1963. Short title, extent and commencement.
(2) It extends to the whole of India.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

10 2. In this Act, unless the context otherwise requires,—
(a) “Board” means the Board of trustees constituted under section 10 or section 41;
(b) “contributing institution” means an institution which is, for the time being, a contributory to the initial capital of the Trust under section 4;
(c) “contribution certificate” means a certificate issued under section 6;
(d) “initial capital” means the capital of the Trust referred to in section 4;

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(e) "Life Insurance Corporation" means the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956;

31 of 1956

(f) "prescribed" means prescribed by regulations made under this Act;

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(g) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;

2 of 1934.

(h) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934;

10 2 of 1934.

(i) "securities" means shares, debentures, bonds and other stock of any company or other body corporate, whether incorporated in India or outside, and securities issued by any local authority in India, or by the Government of, or a local authority in, any such country outside India as may be approved by the Reserve Bank and includes Government security as defined in section 2 of the Public Debt Act, 1944, but does not include mortgages on immovable property;

18 of 1944

(j) "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955;

20 23 of 1955.

(k) "subsidiary bank" has the same meaning as in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;

38 of 1959.

(l) "Trust" means the Unit Trust of India established under section 3;

(m) "trustee" means a trustee appointed, nominated or elected under section 10 or section 41;

(n) "unit" means a unit issued under the unit scheme;

(o) "unit capital" means the aggregate of the face value of the units sold under the unit scheme and outstanding for the time being;

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(p) "unit certificate" means a certificate issued to the purchaser of a unit under the unit scheme;

(q) "unit holder" means a person for the time being recognised by the Trust as the holder of a unit certificate under the unit scheme;

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(r) "unit scheme" means a scheme made under section 21.

CHAPTER II

ESTABLISHMENT OF THE UNIT TRUST OF INDIA AND THE INITIAL CAPITAL THEREOF

3. (1) The Central Government shall, by notification in the Official Gazette, establish a Corporation by the name of the Unit Trust of India which shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and to contract, and may, by the said name, sue or be sued.

Establishment and incorporation of Unit Trust of India.

10 (2) The head office of the Trust shall be at Bombay or at such other place as the Reserve Bank may, by notification in the Official Gazette, specify.

(3) The Trust may establish local offices, branches or agencies at any places in or outside India.

15 4. (1) Subject to the provisions of this Act, the initial capital of the Trust shall be five crores of rupees divided in the form of certificates each of which shall be of such face value as may be prescribed and contributed in the manner hereinafter provided.

Initial capital of Trust.

(2) Before such date as the Central Government may, by notification in the Official Gazette, specify in this behalf—

(a) the Reserve Bank shall contribute two and a half crores of rupees;

(b) the Life Insurance Corporation shall contribute seventy-five lakhs of rupees;

25 (c) the State Bank and the subsidiary banks shall contribute seventy-five lakhs of rupees, the amount which the State Bank and each subsidiary bank shall contribute being determined by the State Bank;

(d) other institutions, namely, scheduled banks other than those referred to in clause (c) and such classes of financial institutions as may be notified by the Central Government in the Official Gazette in this behalf may contribute one crore of rupees.

(3) If the aggregate of the contributions made by the institutions referred to in clause (d) of sub-section (2) exceeds one crore of rupees, the Board shall refund the excess amount to such institu-

tions, so however, that the amount to be refunded to each such institution bears, as far as possible, the same proportion to the contribution made by it as the excess amount bears to the aggregate of the contributions made by such institutions.

(4) If the aggregate of the contributions made by the institutions referred to in clause (d) of sub-section (2) is less than one crore of rupees, the Reserve Bank shall contribute the deficiency within thirty days of the date specified under sub-section (2):

Provided that the Reserve Bank may, thereafter, transfer the whole or any part of its contribution under this sub-section to any institution referred to in clause (d) of sub-section (2).

(5) If at any time the Board is of opinion that the amount of the initial capital is in excess of the requirements of the Trust, it may refund the whole or any part of such capital to the contributing institutions:

Provided that where only a part is so refunded the amount to be refunded to each such institution shall bear, as far as possible, the same proportion to the contribution made by it as such part bears to the initial capital:

Provided further that for the purpose of any refund, the value of the initial capital shall be determined by the Board on such basis as the Central Government may specify in this behalf, regard being had to the real or exchangeable value thereof.

Mainten-
ance of
register of
contribu-
tories.

5. The Board shall maintain in such manner as may be prescribed a register containing the names of the contributing institutions, the amount contributed by each such institution and such other particulars as may be prescribed.

Issue of
contribu-
tion certi-
ficates.

6. (1) As soon as may be after the contribution has been made by any contributing institution under section 4, the Board shall issue to such contributing institution a contribution certificate or contribution certificates in such form and containing such particulars as may be prescribed.

(2) Where the whole or any part of the contribution has been refunded to any institution under sub-section (5) of section 4, that institution shall, as soon as may be after the refund has been made, forward the contribution certificate or certificates to the Board for cancellation or amendment, as the case may be, and the Board shall cancel or amend the certificate or certificates accordingly.

7. (1) Any contributing institution referred to in clause (d) of sub-section (2) of section 4 may, in the prescribed manner, transfer a contribution certificate to any other institution referred to in that clause and thereupon such other institution shall be deemed to be a contributing institution for the purposes of this Act.

(2) Save as provided in sub-section (1), a contribution certificate shall not be transferred.

8. Every holder of a contribution certificate shall have all the rights and be subject to all the liabilities conferred or imposed on a contributing institution by or under this Act.

CHAPTER III MANAGEMENT OF THE TRUST

9. (1) The general superintendence, direction and management of the affairs and business of the Trust shall vest in a Board of trustees which may exercise all powers and do all acts and things which may be exercised or done by the Trust.

(2) The Board shall, in discharging its functions under this Act, act on business principles, regard being had to the interest of the unit holders.

10. The Board of trustees shall consist of the following, namely:—

Board of trustees.

(a) the Chairman to be appointed by the Reserve Bank;

(b) four trustees to be nominated by the Reserve Bank, of whom not less than three shall be persons having special knowledge of, or experience in, commerce, industry, banking, finance or investment;

(c) one trustee to be nominated by the Life Insurance Corporation;

(d) one trustee to be nominated by the State Bank;

(e) two trustees to be elected in the prescribed manner by the contributing institutions referred to in clause (d) of sub-section (2) of section 4; and

(f) an executive trustee to be appointed by the Reserve Bank :

Provided that if the appointment of the Chairman is whole-time, it shall not be necessary to appoint an executive trustee:

Provided further that on the first constitution of the Board, the trustees referred to in clause (e) shall be nominated by the Reserve

Bank and shall hold office for a period of twelve months from the date of their nomination or until two trustees are elected under the said clause, whichever may be earlier.

Term of office of trustees.

11. (1) A trustee nominated under clause (b) of section 10, if he is an officer of the Reserve Bank, or a trustee nominated under clause (c) or clause (d) of that section shall hold office during the pleasure of the authority nominating him. 5

(2) A trustee nominated under clause (b) of section 10, if he is not an officer of the Reserve Bank, or a trustee elected under clause (e) of that section shall hold office for four years and thereafter until his successor is duly nominated or elected. 10

(3) A casual vacancy in the office of a trustee referred to in sub-section (2) or in the office of a trustee nominated under the second proviso to section 10 shall be filled by election or nomination, as the case may be, and the trustee so elected or nominated shall hold office 15 for the unexpired portion of the term of his predecessor:

Provided that no such vacancy occurring within three months of the date of the expiry of the normal term of office of such trustee need be filled under this sub-section.

(4) A trustee nominated under the second proviso to section 10 or 20 a trustee nominated in his place under sub-section (3) of this section shall be deemed to be a trustee elected under clause (e) of section 10.

(5) A person who holds, or who has held, office as a trustee shall, subject to the other provisions of this Act, be eligible for re-nomination or re-election, as the case may be. 25

Disqualification for being a trustee.

12. A person shall not be capable of being nominated or elected as a trustee if—

(a) he is, except in the case of the Chairman or the executive trustee, an officer or other employee of the Trust; or 30

(b) he is, or at any time has been, adjudicated as insolvent or has suspended payment of his debts or has compounded with his creditors; or

(c) he is of unsound mind and stands so declared by a competent court; or 35

(d) he has been convicted of an offence which, in the opinion of the Reserve Bank, involves moral turpitude.

13. (1) If a trustee—

Vacation
and resig-
nation of
office of
trustee.

(a) becomes subject to any of the disqualifications mentioned in section 12; or

5 (b) is absent without leave of the Board from more than three consecutive meetings thereof; or

(c) being a trustee elected or deemed to be elected under clause (e) of section 10 becomes an officer or other employee of Government or of the Reserve Bank, State Bank, a subsidiary bank or the Trust,

10 his office shall thereupon become vacant.

(2) A trustee nominated under clause (b) of section 10 who is not an officer of the Reserve Bank or a trustee elected or deemed to be elected under clause (e) of that section may by letter addressed to the Board resign his office and on such resignation being accepted by 15 the Board shall be deemed to have vacated his office.

14. (1) The appointment of a Chairman or of an executive trustee Chairman
may be either whole-time or part-time and
executive
trustee.

Provided that if the appointment of the Chairman is part-time, the appointment of the executive trustee shall be whole-time.

20 (2) The Chairman or the executive trustee shall—

(a) hold office for such term not exceeding five years as the Reserve Bank may specify;

25 (b) receive such salary or allowances or both from the Trust and be governed by such terms and conditions of service as the Reserve Bank may determine; and

(c) perform such functions as the Board may entrust or delegate to him.

15. If the Chairman or the executive trustee is by infirmity or Casual otherwise rendered incapable of carrying out his duties or is absent 30 on leave or otherwise, in circumstances not involving the vacation of his appointment, the Reserve Bank may nominate another person to act in his place until the date on which the Chairman or the executive trustee, as the case may be, resumes his duties. vacancy
in office
of chair-
man or
executive
trustee.

16. Trustees, other than the Chairman and the executive trustee, 35 shall be paid such fees and allowances for attending the meetings of the Board or of any of its committees and for attending to any other work of the Trust, as may be prescribed:

Fees and
allow-
ances of
certain
trustees.

Provided that no fees shall be payable to a trustee who is an officer of Government or of any corporation established by any law 40 for the time being in force.

Meetings
of Board.

17. (1) The Board shall meet not less than six times a year and at least once every two months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(2) The Chairman, or, if for any reason he is unable to attend any meeting of the Board, any other trustee nominated by him in this behalf or, in the event of such nominated trustee also being unable to attend the meeting or no such nomination having been made by the Chairman, any other trustee elected by the trustees present at the meeting from among themselves, shall preside at the meeting. 10

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the trustees present and voting, and, in the event of equality of votes, the Chairman or, in his absence, the person presiding, shall have a second or casting vote.

Executive
Commit-
tee and
other
com-
mittees.

18. (1) There shall be an Executive Committee which shall consist of-- 15

- (a) the Chairman of the Board,
- (b) where an executive trustee has been appointed by the Reserve Bank, such executive trustee, and
- (c) two other trustees nominated in this behalf by the Reserve Bank.

(2) The Chairman of the Board shall be the Chairman of the Executive Committee.

(3) Subject to such general or special directions as the Board may, from time to time, give the Executive Committee shall be competent 25 to deal with any matter within the competence of the Board.

(4) The Board may constitute such other committees whether consisting wholly of trustees or wholly of other persons or partly of trustees and partly of other persons as it thinks fit and for such purpose as it may decide. 30

(5) The Executive Committee or any other committee constituted under this section shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(6) The members of a committee (other than the trustees) shall 35 be paid such fees and allowances for attending its meetings and for attending to any other work of the Trust, as may be prescribed:

Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force. 40

CHAPTER IV

POWERS AND FUNCTIONS OF THE TRUST

19. (1) The Trust may carry on and transact any of the following kinds of business, namely:—

- 5 (a) selling and purchasing units;
- (b) investing in, acquiring, holding or disposing of, securities and exercising and enforcing all powers and rights incidental thereto;
- 10 (c) keeping money on deposit with scheduled banks or with such other institutions as may be prescribed;
- (d) generally, doing all such matters and things as may be incidental to or consequential upon the discharge of its functions under this Act.

(2) The Trust shall not take on lease, purchase or otherwise acquire except for its own use any immovable property or any interest therein.

20. (1) The Trust may borrow from any authority or person, not being Government or the Reserve Bank, against such security and on such terms and conditions as may be agreed upon.

20 (2) The Trust may borrow money from the Reserve Bank repayable on demand or on the expiry of a fixed period not exceeding ninety days from the date on which the money is so borrowed against stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for 25 the time being in force in India.

(3) If the Board is of opinion that a situation has arisen in which it is necessary or expedient for the Trust to borrow money from the Reserve Bank against securities other than those mentioned in sub-section (2), the Trust may borrow money from that bank repayable 30 on demand or within a period not exceeding eighteen months from the date on which the money is so borrowed against its own bonds which the Trust may issue with the approval of the Central Government.

(4) The bonds issued by the Trust under sub-section (3) shall be 35 guaranteed by the Central Government as to the repayment of principal and the payment of interest at such rate as may be fixed by the Central Government at the time the bonds are issued.

21. (1) For the purpose of providing facilities for participation Unit in the income, profits and gains arising out of the acquisition, holding, scheme,

Business
of Trust.

management or disposal of securities by the Trust, the Board shall make a unit scheme.

(2) Subject to the provisions of this Act, and the regulations made under section 43, a scheme made under sub-section (1) may provide for—

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(a) the issue of units and the face value of each unit, which shall not be less than ten rupees or more than one hundred rupees;

(b) the form and manner in which an application may be made for the purchase of a unit from the Trust;

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(c) the manner in which payment may be made for purchasing a unit from the Trust;

(d) the issue of unit certificates and the form and manner in which such certificates may be issued;

(e) the issue of duplicate of any unit certificate in the event of loss or destruction of the original and the fee on the payment of which such duplicate may be issued;

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(f) the procedure for determining the value at which the units may be sold or purchased, from time to time, by the Trust;

(g) the recognition of persons as unit holders;

20

(h) the persons to whom, the time at which and the manner in which any payments in respect of a unit shall be made by the Trust;

(i) the preparation and maintenance of a register, if any, of unit holders;

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(j) the conditions, if any, subject to which a unit holder may transfer the unit;

(k) any other matter which the Trust may consider to be necessary or proper for the effective implementation of the scheme.

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(3) The Board may, from time to time, add to or otherwise amend the scheme made under sub-section (1).

(4) The scheme made under sub-section (1) and every amendment thereof under sub-section (3) shall be notified in the Official Gazette.

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CHAPTER V

ALLOCATION AND DISTRIBUTION OF INCOME

22. (1) The total gross income of the Trust in any year shall be allocated to the initial capital and the unit capital in the same proportion as the former bears to the latter at the end of that year.

(2) The interest payable for any year for any borrowings made by the Trust and the total amount of other expenses incurred by the Trust in that year shall be allocated and charged to the initial capital and the unit capital in the same proportion as is referred to in sub-section (1):

Provided that if the amount of expenses other than interest allocated to the unit capital is more than five per cent. of the gross income allocated to the unit capital in that year, only an amount equal to such five per cent. shall be charged to the unit capital and the rest of the total amount of expenses other than interest shall be charged to the initial capital.

23. (1) The gross income allocated to the initial capital in any year reduced by the interest and the amount of other expenses charged for that year to the initial capital may be distributed in the prescribed manner among the contributing institutions in proportion to their contributions to the initial capital.

(2) The gross income allocated to the unit capital in any year reduced by the interest and the amount of other expenses charged for that year to the unit capital may, but not less than ninety per cent. of the gross income so reduced shall, be distributed to the unit holders in respect of that year.

24. Notwithstanding anything contained in section 22 or section 23, where the whole of the initial capital has been refunded to the contributing institutions, the gross income in any year reduced by the interest payable for that year for any borrowings made by the Trust and the total amount of other expenses incurred by the Trust in that year may, but not less than ninety per cent. of the gross income so reduced shall, be distributed to the unit holders in respect of that year.

25. In this Chapter "year" means the period in respect of which the books and accounts of the Trust are balanced and closed under sub-section (2) of section 26.

CHAPTER VI

ACCOUNTS AND AUDIT

Preparation of balance-sheet, etc., of Trust.

26. (1) The balance-sheet and accounts of the Trust shall be prepared and maintained in such form and manner as may be prescribed.

(2) The Board shall cause the books and accounts of the Trust 5 to be balanced and closed each year as on such date as may be prescribed.

Audit.

27. (1) The affairs of the Trust shall be audited by an auditor duly qualified to act as an auditor under sub-section (1) of section 226 of the Companies Act, 1956, who shall be appointed by the Trust ¹⁰ _{1 of 1956} and shall receive such remuneration as the Trust may fix.

(2) The auditor shall be supplied with a copy of the annual balance-sheet of the Trust and it shall be his duty to examine it together with the accounts and vouchers relating thereto and he shall have a list delivered to him of all books kept by the Trust and shall ¹⁵ at all reasonable times have access to the books, accounts, vouchers and other documents of the Trust.

(3) The auditor may, in relation to such accounts, examine any trustee or any officer or other employee of the Trust and shall be entitled to require from the Board or officers or other employees of the Trust such information and explanation as he may think necessary for the performance of his duties. ²⁰

(4) The auditor shall make a report to the Trust upon the annual balance-sheet and accounts examined by him and in every such report he shall state whether in his opinion the balance-sheet is a ²⁵ full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and fair view of the state of affairs of the Trust and in case he had called for any information or explanation from the Board or any officer or other employee of the Trust, whether it has been given and whether it is satisfactory. ³⁰

Publication of annual accounts and reports.

28. The Trust shall furnish to each of the contributing institutions within four months from the date on which its accounts are balanced and closed in respect of any year a copy of the balance-sheet and accounts together with a copy of the auditor's report and shall publish the same in the Official Gazette. ³⁵

Furnishing of information to Reserve Bank.

29. The Trust shall furnish, from time to time, to the Reserve Bank such information as the Reserve Bank may require.

CHAPTER VII

MISCELLANEOUS

30. In the discharge of its functions under this Act, the Trust shall be guided by such directions in matters of policy involving public interest as the Reserve Bank may give to it in writing, and if any question arises whether the direction relates to a matter of policy involving public interest, the decision of the Reserve Bank thereon shall be final.

31. (1) The Trust may appoint such number of officers and other employees as it considers necessary or desirable for the efficient performance of its functions and determine the terms and conditions of their appointment and service.

(2) Without prejudice to the provisions of sub-section (1), it shall be lawful for the Trust to utilise, and for the Reserve Bank to make available, the services of such staff of the Reserve Bank on such terms and conditions as may be agreed upon between the Trust and the Reserve Bank.

43 of 1961. 32. (1) Notwithstanding anything contained in the Income-tax Act, 1961, the Super Profits Tax Act, 1963, or in any other enactment for the time being in force relating to income-tax, super-tax or super profits tax, or any other tax on income, profits or gains—

(a) the Trust shall not be liable to pay income-tax, super-tax, super profits tax or any other tax in respect of any income, profits or gains derived by it from any source;

25 (b) where the income received by a unit holder, being an individual, from the Trust in respect of units does not exceed one thousand rupees, such income, and where such income exceeds one thousand rupees, a sum of one thousand rupees, shall be excluded in computing the total income of the unit holder for purposes of income-tax but not of super-tax; and

14 of 1963. 35 (c) where a contributing institution is liable to be assessed to super profits tax under the Super Profits Tax Act, 1963, in respect of its own income, profits or gains and receives any sum from the Trust under this Act in respect of its contribution to the initial capital, such sum as reduced by the amount of any income-tax and super-tax payable in respect thereof shall be excluded from the total income of the said institution in computing its chargeable profits for the purposes of super profits tax.

(2) Notwithstanding anything contained in section 193 or section 194 of the Income-tax Act, 1961—

43 of 1961.

(a) no deduction of income-tax or super-tax shall be made on any interest or dividend payable to the Trust in respect of any securities or shares owned by it or in which it has full beneficial interest; and

(b) no deduction of income-tax shall be made by the Trust from the income distributed by it to a unit holder being an individual.

(3) Subject to the foregoing sub-sections, for the purposes of the Income-tax Act, 1961,—

43 of 1961.

(a) any distribution of income received by a unit holder from the Trust shall be deemed to be his income by way of dividends; and

(b) the Trust shall be deemed to be a company.

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Act 18 of 1891 to apply in relation to Trust.

Declaration of fidelity and secrecy.

Defects in appointments not to invalidate acts, etc.

Indemnity of trustees.

33. The Bankers' Books Evidence Act, 1891 shall apply in relation to the Trust as if it were a bank as defined in section 2 of the said Act.

34. Every trustee, auditor, officer or other employee of the Trust or any employee of the Reserve Bank whose services are utilised by the Trust under section 31 shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the First Schedule to this Act.

35. (1) No act or proceeding of the Board or of any committee of the Trust shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board or committee.

(2) No act done by any person acting in good faith as a trustee shall be deemed to be invalid merely on the ground that he was disqualified to be a trustee or that there was any other defect in his appointment.

36. (1) Every trustee shall be indemnified by the Trust against all losses and expenses incurred by him in, or in relation to, the discharge of his duties except such as are caused by his own wilful act or default.

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(2) A trustee of the Board shall not be responsible for any other trustee, or for any officer or other employee of the Trust, or for any loss or expenses resulting to the Trust, from the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Trust or the insolvency or wrongful act of any debtor or any person under obligation to the Trust or anything done

in good faith in the execution of the duties of his office or in relation thereto.

37. No suit or other legal proceeding shall lie against the Trust or the Reserve Bank or any trustee or any officer or other employee of the Trust or the Reserve Bank or any other person authorised by the Trust to discharge any functions under this Act for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act.

38. The Board may, by general or special order, delegate to any officer of the Trust, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.

39. (1) No notice of a trust, express, implied or constructive, shall be receivable by the Trust.

15 (2) The amount standing to the credit of a contributing institution shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the contributing institution.

40. (1) In the event of a contributing institution referred to in clause (d) of sub-section (2) of section 4 being wound up, the Trust shall, on a demand in that behalf made by the authority in charge of the winding up, pay to such authority an amount equivalent to the value of the contribution to the initial capital made by that institution.

25 (2) The value of the contribution shall be determined by the Board on such basis as the Central Government may specify, regard being had to the real or exchangeable value of such contribution.

41. (1) Notwithstanding anything contained in section 10 or section 11, where the whole of the initial capital has been refunded to the contributing institutions, the Central Government may, after consultation with the Reserve Bank, by order, provide for the reconstitution of the Board.

(2) An order made under sub-section (1) may provide for all or any of the following matters, namely:—

35 (a) the number of trustees that will constitute the Board;

(b) the manner in which they shall be chosen;

(c) their term of office;

(d) filling of casual vacancies;

(e) such incidental, consequential and supplementary matters as may be necessary to give effect to the order including the reconstitution of the executive committee or other committees.

(3) Every order made under this section shall be published in the Official Gazette and a copy thereof shall be laid before each 5 House of Parliament as soon as may be after it is made.

Liquidation of Trust.

42. (1) The Trust shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct.

(2) In making such order, the Central Government shall, if the initial capital has not been wholly refunded, direct, among other 10 things, that—

(i) the value of the net assets of the Trust after paying off all its liabilities, other than those in respect of the initial capital and the unit capital shall be divided into two parts in the same proportion as the aggregate face value of all the units immediately prior to the date on which the Trust is placed in liquidation bears to the initial capital as on that date; and 15

(ii) the first part shall be distributed among the contributing institutions in proportion to their respective contributions to the initial capital as on that date and the second part shall 20 be distributed among the unit holders in proportion to the face value of the units held by them as on that date.

Regulations.

43. (1) The Board may, with the previous approval of the Reserve Bank, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the 25 purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the form and manner of maintenance of the register of contributing institutions and the particulars to be contained 30 therein;

(b) the face value of a contribution certificate, its form and the particulars to be contained therein;

(c) the manner of transfer of a contribution certificate;

(d) the rights and liabilities of a contributing institution; 35

(e) the holding and conduct of elections under this Act, including the final decision on doubts or disputes regarding the validity of elections;

(f) the fees and allowances that may be paid to the trustees;

(g) the times and places of the meetings of the Board or of any committee constituted under this Act and the procedure to be followed at such meetings including the quorum necessary for the transaction of business;

5 (h) the fees and allowances that may be paid to the members of a committee, other than trustees;

11 (i) the institutions with which money may be kept on deposit;

10 (j) the manner of distribution of income to the contributing institutions;

15 (k) the form and manner in which the balance-sheet and the accounts of the Trust shall be prepared and maintained;

15 (l) the date on which the books of accounts of the Trust shall be balanced and closed each year;

15 (m) the duties and conduct, salaries and allowances, and other conditions of service of officers and other employees of the Trust;

20 (n) the establishment and maintenance of provident or other benefit funds for officers and other employees of the Trust; and

20 (o) any other matter which is to be, or may be, prescribed.

(3) Any regulation which may be made by the Board under this Act may be made by the Reserve Bank within three months of the establishment of the Trust, and any regulation so made may be altered or rescinded by the Board in the exercise of its powers under this Act.

25 44. The enactments specified in the Second Schedule to this Act shall be amended in the manner provided therein.

Amend-
ment of
certain
enact-
ments.

THE FIRST SCHEDULE

(See section 34)

DECLARATION OF FIDELITY AND SECRECY

I do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as trustee, auditor, officer or other employee (as the case may be) of the Unit Trust of India and which properly relate to the office or position held by me in the said Trust.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Unit Trust of India or to the affairs of any person having any dealing with the said Trust; nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Unit Trust of India and relating to the business of the said Trust or the business of any person having any dealing with the said Trust.

Signed before me:

(Signature)

THE SECOND SCHEDULE

(See section 44)

20

AMENDMENT OF CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934

(2 OF 1934)

Amendments

25

Amend-
ment of
section 2.

1. In section 2, after clause (f), insert the following clause, namely:—

‘(g) “Unit Trust” means the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963.’

Amend-
ment of
section 17.

2. In section 17,—

(a) after clause (4BB), insert the following clause, namely:—

“(4BBB) the making to the Unit Trust of loans and advances—

(i) repayable on demand or on the expiry of a fixed period not exceeding ninety days from the date of 35

30

such loan or advance against the security of stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India, or

5 (ii) repayable on demand or within a period of eighteen months from the date of such loan or advance against the security of the bonds of the Unit Trust issued with the approval of and guaranteed by the Central Government,";

10 (b) after clause (4E), insert the following clause, namely:—
“(4F) contributing to the initial capital of the Unit Trust.”

PART II

AMENDMENT TO THE INDUSTRIAL DISPUTES ACT, 1947

15 (14 OF 1947)
Amendment

In section 2, in sub-clause (i) of clause (a), after “Deposit Insurance and
Amendment of
Corporation Act, 1961 or” insert the following, namely:—
section 2.

20 “the Unit Trust of India established under section 3 of the Unit
Trust of India Act, 1963, or”.

PART III

AMENDMENT TO THE INDUSTRIAL FINANCE CORPORATION ACT, 1948

(15 OF 1948)
Amendment

25 For section 20, substitute the following, namely:—

“20. The Corporation may invest its funds in the securities of the Central Government or of any State Government and may, with the approval of the Central Government, contribute to the initial capital of the Unit Trust of India established under the Unit Trust of India
30 Act, 1963.”.

Substitution of
new section for
section 20.
Investment
of funds.

PART IV

AMENDMENT TO THE STATE BANK OF INDIA ACT, 1955

(23 OF 1955)
Amendment

35 In section 33, after clause (xix a), insert the following clause, namely:—

Amend-
ment of
section 33.

“(xix aa) contributing to the initial capital of the Unit Trust of India established under the Unit Trust of India Act, 1963.”.

STATEMENT OF OBJECTS AND REASONS

The question of establishing an institution in the public sector for carrying on the business which is transacted by unit trusts or mutual funds in other countries has been under consideration for some time. It is now proposed to establish such an institution, to be known as the Unit Trust of India, with an initial capital of five crores of rupees. The Unit Trust of India will encourage savings by providing for various classes of investors the facility of investing their money in units of the Trust. The Trust will invest the initial capital and the capital obtained by the sale of units in shares and other securities and will distribute every year not less than ninety per cent. of the net income accruing to the unit-holders. It is expected that the risk of losses or of depreciation on account of the investments will be reduced or eliminated, as a result of the proposed arrangement. The Trust will also be in a position to contribute, through its operations, to the growth and diversification of the country's economy.

2. The various provisions of the Bill are explained in detail in the notes on clauses.

NEW DELHI;

T. T. KRISHNAMACHARI.

The 14th November, 1963.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F.7/80/63-SB, dated the 19th November, 1963 from Shri T. T. Krishnamachari, Minister of Finance to the Secretary, Lok Sabha].

The President having been informed of the subject matter of the proposed Unit Trust of India Bill, 1963, recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 and clause (1) of article 274 and its consideration under clause (3) of article 117 of the Constitution.

Notes on clauses

Clause 3 provides for the establishment of the Trust. Its head office will be at Bombay, but provision has been made in the Bill for the transfer of the head office to any other place, if this is later on found to be convenient, and also for the establishment of such branch offices or agencies as may be necessary.

Clause 4 provides for the obligations of the Reserve Bank and other institutions which will be contributing to the initial capital of the trust. The Reserve Bank will be required to contribute Rs. 2.5 crores, the Life Insurance Corporation Rs. 75 lakhs and the State Bank of India and its subsidiaries a further sum of Rs. 75 lakhs. A sum of Rs. 4 crores out of the total initial capital of Rs. 5 crores will thus be contributed by institutions in the public sector. The balance of Rs. 1 crore will be offered to scheduled banks in the private sector or other financial institutions, which may be willing to become contributors, but if the actual contributions fall short of the sum of Rs. 1 crore earmarked for this purpose, the deficiency will be made good by the Reserve Bank. The special contribution, if any, which may be made by the Reserve Bank in the first instance, for making up any deficiency in the contributions by the institutions in the residuary category, may, if necessary, be transferred to these institutions at any later stage.

The initial contributions in all cases can be refunded at the option of the Trust, but the Trust will be required to arrange for such refunds, if any, on a *pro rata* basis, in the proportion in which the contributions have been made by the various institutions.

Clauses 5 and 6 provide for the maintenance of a register of contributors and the issue of certificates to the contributing institutions indicating the extent of their contributions.

Clauses 7 and 8 provide for the transfer of the certificates of contribution. The Reserve Bank, the Life Insurance Corporation and the State Bank and its subsidiaries will not be able to transfer their contributions to other institutions. The other contributors will however be able to do so among themselves.

Clauses 9 to 16 provide for the management of the Trust. The Board of trustees will ordinarily consist of nine members. The Chairman and four other members will be nominated by the Reserve Bank, one trustee each will be nominated by the Life Insurance Corporation and the State Bank, and two trustees will be elected by scheduled banks in the private sector and other financial institutions, which may become contributories. If the Chairman is appointed on a part-time basis, or if it is otherwise considered necessary or desirable, a whole-time executive trustee will be appointed, in addition to the nine other members. The Chairman and the executive trustee will be appointed for such periods, not exceeding five years, as may be determined by the Reserve Bank. The nominees of the Reserve Bank, if they are officials and the nominees of the Life Insurance Corporation and the State Bank will hold office at the pleasure of the authorities nominating them. The nominees of the Reserve Bank, if they are non-officials, and the two elected trustees will hold office for a period of four years in each case.

Clauses 17 and 18 provide for the procedure to be followed at meetings of the Board of trustees and the constitution of executive and other committees.

Clause 19 deals with the business which the Trust is expected to transact. The Trust will buy and sell securities, including bonds, shares or other stock of statutory corporations, companies or other bodies corporate. The Trust will not acquire any immovable property except for its own use.

Clause 20 provides for the grant of temporary ways and means assistance to the Trust by the Reserve Bank of India or by other lending institutions. The Trust will be in a position to obtain normal banking accommodation from the Reserve Bank for periods not exceeding ninety days, and will, in an emergency, be able to borrow from that bank for periods up to six months against its own bonds, issued for this purpose with the approval and guarantee of the Central Government. The Trust will be able to borrow from other banks or financial institutions, on terms and conditions which may be agreed upon, but it will not be in a position to borrow any money directly from the Central Government.

Clause 21 provides for the framing and publication of the scheme, in accordance with which units will be sold by the Trust. The scheme will provide for the sale of units, representing and backed by, all the investments made by the Trust. The face value of the unit will not be less than Rs. 10 or more than Rs. 100. The units will be sold at prices determined by the Trust, having regard to the dividends declared by it on the face value of the units. The Trust will

be prepared to purchase back the units, if necessary, at prices announced by the Trust from time to time. There will be no limit to the number of units which can be purchased and held by unit-holders. Transfers of units will be recognised under prescribed conditions. Dividends will be declared and distributed by the Trust to the unit-holders once every year, after the accounts for that year have been closed and audited.

Clauses 22 to 24 deal with the allocation and disposal of the Trust's annual income. The total gross income and expenses in any year will be allocated, as between the initial capital and the capital representing the face value of the units sold and outstanding at the end of that year. Management expenses will be limited to five per cent. of the gross income allocated to the units, the actual expenditure, if any, in excess of this ceiling being charged to the contributories to the initial capital. At least ninety per cent. of the gross income less the management and other expenses allocated to the units will be distributed to the unit holders.

Clauses 26 to 28 provide for the preparation, audit and publication of balance-sheets and accounts.

Clause 30 provides that the Reserve Bank may give to the Trust, from time to time, such directions as may be necessary.

Clause 31 and Clauses 33 to 38 provide for the recruitment of staff, the utilisation by the Trust, where necessary, of the services of the employees of the Reserve Bank, the application of the provisions of the Bankers' Books Evidence Act, 1891, in relation to the Trust, declarations of fidelity and secrecy by the trustees and employees, the indemnity of trustees, protection of any action taken in good faith and the delegation of powers.

Clause 32 provides for the grant of relief from certain provisions of the Income Tax Act, 1961 and other enactments, in order to facilitate the operations of the Trust and to encourage savings by individuals in the form of units. The Trust, as an institution acting for and in the interests of the unit-holders, will be exempted from the payment of income-tax, super-tax, and other taxes on its income. The contributories to the initial capital will be exempted from the payment of super profits tax on the income accruing to them in respect of their contributions. The unit-holders will be exempted from the payment of income-tax, but not of super-tax, on the dividend income obtained from the units. The Trust, in so far as the income accruing to it is concerned and the unit-holders in respect of the

dividends accruing to them from the Trust, will be entitled to receive the amounts due to them, without deduction of income-tax at source (super-tax deductions will, however, be made in the case of non-resident unit-holders, if any).

Clause 39 provides *inter-alia* that the sums representing the contributions shall not be attachable under any order or decree, passed on account of any debts or liabilities incurred by the contributing institutions.

Clauses 40 and 41 provide for the return by the Trust of the contributions towards the initial capital, when it is no longer required. As in the case of partial refunds, the value of the contributions will be determined in accordance with directions issued by the Central Government. The Board of Trustees will be reconstituted after the initial capital has been completely refunded, in the manner prescribed by the Central Government, in consultation with the Reserve Bank.

Clause 42 provides for the liquidation of the Trust, if necessary, and for the distribution of the assets of the Trust in that event as between the unit-holders and the contributories, if any, to the initial capital at that time.

Clause 43 provides for regulations to be made by the Trust with the approval of the Reserve Bank to give effect to the provisions of the Bill.

Clause 44 seeks to amend certain enactments, for the purposes of enabling the Reserve Bank, the State Bank (and the Industrial Finance Corporation in case it is interested) to contribute to the initial capital of the Trust, for providing for the grant of loans to the Trust by the Reserve Bank, and for enabling the Central Government to discharge, in relation to the Trust, the functions of an appropriate Government in the event of industrial disputes.

FINANCIAL MEMORANDUM

Clause 20 provides that the Central Government may, in certain contingencies, guarantee the bonds issued by the Trust for the purpose of enabling it to borrow from the Reserve Bank of India. The bonds are intended to be issued only in an emergency, and it is not possible at this stage to indicate whether or when they will be issued or the extent of the Central Government's contingent liability. It is anticipated, however, that the guarantees, if any, will not ultimately involve any expenditure from the Consolidated Fund of India. The provision proposed to be made is also on the lines of similar provisions in regard to the Industrial Finance Corporation and other financial institutions.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 21 confers power on the Board to make a unit scheme which will *inter alia* provide for the issue of units, their face value, the form and manner in which an application for the purchase of a unit from the Trust may be made, the issue of unit certificates and the recognition of persons as unit holders.

2. Clause 41 empowers the Central Government to provide by an order for the reconstitution of the Board when the initial capital has been refunded in full to the contributing institutions. It is not possible to say at this stage what will be the shape of the reconstituted Board. An order made under the said clause will provide for the number of trustees that will constitute the Board, the manner in which they shall be chosen, their term of office, filling of casual vacancies and such supplementary matters as may be necessary to give effect to the order.

3. Clause 43 of the Bill empowers the Board to make regulations, with the previous approval of the Reserve Bank to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Bill. These matters *inter alia* relate to the form and manner of maintenance of the register of contributing institutions, the form of the certificate of contribution, the manner of transfer of certificate of contribution, the rights and liabilities of a contributing institution, the holding and conduct of elections, the fees and allowances that may be paid to the trustees of the Board, the times and places of meetings of the Board, the institutions with which money may be kept on deposit, the date on which the books of account of the Trust shall be balanced and closed each year.

4. The matters in respect of which power is conferred on the Central Government under clause 41 or on the Board under clause 21 or clause 43 are matters of detail or of routine nature and the delegation of legislative power is of a normal character.

BILL No. 46 OF 1963

A Bill further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, Short title and commencement. 1963.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

1 of 1956. 2. In section 2 of the Companies Act, 1956 (hereinafter referred Amendment of section 2. to as the principal Act),—

(a) after clause (10), the following clause shall be inserted, namely:—

15 (10A) "Company Law Board" means the Board of Company Law Administration constituted under section 10E;';

(b) after clause (49), the following clause shall be inserted, namely:—

(49A) "Tribunal" means the Tribunal constituted under section 10A;'.
20

3. After section 10 of the principal Act, the following sections Insertion of new sections after section 10 in Part I. shall be inserted in Part I, namely:—

10A. (1) The Central Government may, by notification in Constitution of Tribunal. the Official Gazette, constitute a Tribunal consisting of as many members as it thinks fit, to exercise and discharge—

25 (a) the powers and functions conferred on such Tribunal by or under this Act;

(b) the powers and functions conferred on the Court by or under section 203 in so far as it relates to the granting of leave under that section and sections 397 to 407; and

(c) such other powers and functions conferred on the Court by or under this Act as the Central Government may, ⁵ by notification in the Official Gazette, specify:

Provided that where any powers and functions are or become exercisable by the Tribunal by virtue of this section, the Court shall not exercise those powers and functions and any reference to the Court in any of the sections, powers and functions of the Court whereunder have been conferred on the Tribunal, shall be construed as a reference to the Tribunal.

(2) The members of the Tribunal shall be persons who appear to the Central Government to have adequate knowledge of, and experience in,— ¹⁵

- (a) law, or
- (b) matters of accountancy, or
- (c) administration or management of companies and law relating thereto.

(3) The Central Government shall ordinarily appoint one ²⁰ of the members of Tribunal having knowledge of, and experience in law, who—

- (a) is or has been a Judge of a High Court; or
- (b) is qualified for appointment as Judge of a High Court; ²⁵

to be the chairman of the Tribunal.

(4) The chairman and other members of the Tribunal shall receive from the Central Government such remuneration, and shall be governed by such conditions of service, as the Central Government may determine: ³⁰

Provided that the remuneration of the chairman or any other member shall not be varied to his disadvantage after his appointment.

(5) Nothing in this section shall derogate from the powers and functions of the Court in relation to any proceeding pending ³⁵ before the Court immediately before such powers and functions are or become exercisable by the Tribunal by virtue of this section and the Court shall dispose of such proceeding accordingly.

(6) The provisions of this Act shall apply in relation to the enforcement of any order of the Tribunal as if such order were an order of the Court under this Act.

5 *Explanation.*—In this section, “Court” means the Court as defined in sub-clause (a) of clause (11) of section 2 and, where the powers and functions have been conferred expressly by any section on a Judge of a High Court, includes such Judge.

10B. (1) The powers and functions of the Tribunal may be ~~Procedure of~~ ^{Tribunal} exercised and discharged by Benches constituted by the chair- man of the Tribunal from among the members thereof.

10 (2) Every such Bench shall consist of one or more members as the Central Government may, by rules made under this Act, determine.

15 (3) Where a Bench consists of more than one member, one of them shall be a person having knowledge of, and experience in, law.

20 (4) In case of difference of opinion among the members of a Bench consisting of more than one member, the opinion of the majority shall prevail and orders of the Bench shall be expressed in terms of the views of the majority:

25 Provided that if the members of the Bench are equally divided in opinion on any point, they shall prepare a statement on the point and refer the same to the chairman of the Tribunal for the hearing of such point by one or more of the other members of the Tribunal and such point shall be decided according to the opinion of the majority of the members of the Tribunal who have heard it, including those who first heard it.

30 (5) Subject to the provisions of this Act and the rules made thereunder, the Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers and the discharge of its functions, including the places at which the Benches shall hold their sittings.

35 10C. (1) The Tribunal shall have the powers which are ~~of~~ ^{Powers of} vested in a court under the Code of Civil Procedure, 1908, when ~~of~~ ^{Tribunal} trying a suit, in respect of the following matters:—

(a) discovery and inspection,

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses,

- (c) compelling the production of documents,
- (d) examining witnesses on oath,
- (e) granting adjournment,
- (f) reception of evidence taken on affidavit,
- (g) issuing commissions for the examination of witnesses, and summoning and examining *suo motu* any person whose evidence appears to the Tribunal to be material. 5

(2) Where the Tribunal has reason to believe that any place is used for the deposit or custody of any document or thing which may be material for the purposes of any proceeding before it, the Tribunal may by its warrant authorise and direct any police officer above the rank of a constable— 10

- (a) to enter that place with such assistance as may be required,
- (b) to search the same in the manner specified in the 15 warrant,
- (c) to take possession of any documents or things therein found and to prepare a list of the same and to dispose of them in accordance with the provisions hereinafter contained. 20

(3) When in the execution of a search warrant under sub-section (2) any documents or things for which search is made are found, such documents or things, together with the list of the same, shall immediately be taken before the Tribunal.

(4) The provisions of the Code of Criminal Procedure, 1898, 25 5 of 1898. shall, so far as may be, apply to a search directed, and a search warrant issued, under sub-section (2) as they apply to a search and a search warrant under section 98 of that Code.

(5) The Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and every proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code. 30 45 of 1860.

10D. (1) Save as otherwise provided in this Act, an appeal 35 shall lie only on questions of law arising out of any decision, finding or order of the Tribunal to the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate.

(2) Every such appeal shall be heard by a Bench of not less than two Judges of the High Court.

5 (3) Every such appeal shall be filed within the period of sixty days from the date of the decision, finding or order of the Tribunal:

Provided that the appeal may be admitted after the expiry of the aforesaid period if the appellant satisfies the High Court that he had sufficient cause for not preferring the appeal within that period.'

10 4. In the principal Act, after Part I, the following Part and section shall be inserted, namely:— Insertion of new Part IA after Part I.

'PART IA

BOARD OF COMPANY LAW ADMINISTRATION

15 10E. (1) As soon as may be after the commencement of the Companies (Amendment) Act, 1963, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration to exercise and discharge such powers and functions conferred on the Central Government by or under this Act or any other law as may be entrusted to it by that Government.

Constitution of Board of Company Law Administration.

(2) The Company Law Board shall consist of such number of members, not exceeding five, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette.

25 (3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

30 (5) The procedure of the Company Law Board shall be such as may be prescribed.

(6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government.'

35 5. In section 81 of the principal Act,—

Amendment of section 81.

(a) for the proviso to sub-section (3), the following proviso shall be substituted, namely:—

40 "Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term—

(a) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf; and

(b) in the case of debentures or loans other than 5 debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising 10 of the loans";

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have 15 been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963, the Central Government may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term 20 25 providing for an option for such conversion:

Provided that if the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days of the communication to it of such order or within such further time as may be granted by the 30 High Court, prefer an appeal to the High Court in regard to such terms and conditions and the decision of the High Court on such appeal and, subject only to such decision, the order of the Central Government under this sub-section shall be final and conclusive. 35

(5) In issuing any order under sub-section (4), the Central Government shall have due regard to the financial position of the company, and, in particular, to the terms of issue of the debentures or the terms of the loans, as the case may be, and the rate of interest payable on the debentures 40 or loans, the subscribed capital of the company and its loan liabilities, its reserves, its profits during the preceding five years and the current market price of the shares of the company.".

6. After section 153 of the principal Act, the following section shall be inserted, namely:—

5 “153A. (1) Where any shares in, or debentures of, a company are held in trust by any person (hereinafter referred to as the trustee), the trustee shall, within such time and in such form as may be prescribed, make a declaration to the Registrar.

10 (2) A copy of the declaration made under sub-section (1) shall be sent by the trustee to the company concerned, as soon as may be, after the declaration has been sent to the Registrar.

15 (3) If a trustee contravenes any provision of this section or makes any statement in the declaration which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and also with fine.

20 (4) The provisions of this section and section 187B shall not apply in relation to a trust—

25 (a) where the trust is not created by instrument in writing; or

20 (b) even if the trust is created by instrument in writing, where the trust money invested in shares in, or debentures of, a company—

25 (i) does not exceed one lakh of rupees, or

25 (ii) exceeds one lakh of rupees but does not exceed either five lakhs of rupees or twenty-five per cent of the paid-up share capital of the company.”.

7. After section 187A of the principal Act, the following section shall be inserted, namely:—

30 “187B. (1) Notwithstanding anything contained in this Act or any other law or any contract, memorandum or articles, where a member or debenture-holder of a company (hereinafter referred to as a trustee) holds shares in, or debentures of, the company for the benefit of any other person, the Central Government may, if it considers necessary so to do in the public interest, appoint such person, as it thinks fit, to exercise at any meeting of the company or at any meeting of any class of members of the company or at any meeting of the debenture-holders of the company, as the case may be, the same rights and powers (including the right to vote by proxy) as the trustee would exercise as a member or debenture-holder at such meeting and thereupon the trustee shall not exercise any such rights and powers as aforesaid.

Insertion of new section 153A after section 153.

Declaration as to shares and debentures held in trust

Insertion of new section 187B after section 187A.

Exercise of voting rights in respect of shares and debentures held in trust

(2) In order to enable the person appointed by the Central Government under sub-section (1) to exercise the rights and powers as aforesaid, that person shall also be entitled to receive all books and papers under this Act as if he were a member or a debenture-holder.".

5

Insertion of new Chapter and sections in Part VI. 8. In the principal Act, in Part VI, after Chapter IV, the following Chapter and sections shall be inserted, namely:—

"CHAPTER IVA.—POWERS OF CENTRAL GOVERNMENT TO REMOVE MANAGERIAL PERSONNEL FROM OFFICE ON THE RECOMMENDATION OF THE TRIBUNAL

10

Reference to Tribunal of cases against managerial personnel.

388B. (1) Where in the opinion of the Central Government there are circumstances suggesting—

(a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, negligence or default in carrying out his obligations and functions under the law, or breach of trust; or

(b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or

(c) that a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may state a case against the person aforesaid and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a finding as to whether such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

35

(2) Every case under sub-section (1) shall be stated in the form of an application which shall be presented to the Tribunal or such officer thereof as it may appoint in this behalf.

5 (3) The person against whom a case is referred to the Tribunal under this section shall be joined as a respondent to the application.

(4) Every such application—

10 (a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry, and

3 of 1908. (b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

15 (5) The Tribunal may at any stage of the proceedings allow the Central Government to alter or amend the application in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in the inquiry.

20 388C. (1) Where during the pendency of a case before the Tribunal it appears necessary to the Tribunal so to do in the interest of the members or creditors of the company or in the public interest, the Tribunal may on the application of the Central Government or on its own motion, by an order—

25 (a) direct that the respondent shall not discharge any of the duties of his office until further orders of the Tribunal, and

30 (b) appoint a suitable person in place of the respondent to discharge the duties of the office held by the respondent subject to such terms and conditions as the Tribunal may specify in the order.

45 of 1860. (2) Every person appointed under clause (b) of sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

35 388D. At the conclusion of the hearing of the case, the Tribunal shall record its findings stating therein specifically if the Tribunal considers the respondent as being not a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

40 388E. (1) An appeal shall lie only on questions of law arising out of the findings of the Tribunal to the High Court within the

Interim
order by
Tribunal.

Decision of
the
Tribunal.

Appeal to
High Court
on questions
of law.

local limits of whose jurisdiction the place at which the Tribunal has held its sittings for the purpose of the inquiry under section 388B, is situate and every such appeal shall be heard by a Bench of not less than two Judges of the High Court :

Provided that where the Tribunal has held its sittings at 5 more places than one and such places are situate within the local limits of the jurisdiction of different High Courts, the appeal shall lie to the High Court within the local limits of whose jurisdiction the appellant at the time of the filing of the appeal ordinarily resides. 10

(2) Every such appeal shall be filed within a period of sixty days from the date of the finding of the Tribunal:

Provided that the appeal may be admitted after the expiry of the aforesaid period if the appellant satisfies the High Court that he had sufficient cause for not preferring the appeal within 15 that period.

388F. (1) Notwithstanding any other provision contained in this Act, the Central Government may, by order, remove from office any director, or any other person concerned in the conduct and management of the affairs, of a company, against whom there 20 is a finding of the Tribunal or a decision of a High Court under this Chapter:

Provided that where a firm or a body corporate is concerned in the conduct and management of the affairs of a company as its managing agent or secretaries and treasurers, and the finding 25 of the Tribunal or the decision of a High Court is against any partner in such firm, or any director of, or any person holding a general power of attorney from, such body corporate, the Central Government may also remove from the office of managing agent or secretaries and treasurers such firm or body corporate. 30

(2) No order under this section shall be made against any person unless he has been given a reasonable opportunity to show cause against the same:

Provided that no matter shall be raised by such person before the Central Government if such matter has been decided by the Tribunal or the High Court. 35

(3) The person against whom an order of removal from office is made under this section shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company during a period of 10 five years from the date of the order of removal.

Power of
Central Gov-
ernment to
remove
managerial
personnel
the basis of
Tri-
n
findings.

5 (4) Notwithstanding anything contained in any other provision of this Act, or any other law or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to claim any compensation for the loss or termination of office.

10 (5) On the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, the company may, with the previous approval of the Central Government, appoint another person to that office in accordance with the provisions of this Act.”.

9. In section 397 of the principal Act—

15 (a) in sub-section (1), for the words “are being conducted”, 397. the words “are being conducted in a manner prejudicial to public interest or” shall be substituted;

20 (b) in sub-section (2), in clause (a), for the words “are being conducted”, the words “are being conducted in a manner prejudicial to public interest or” shall be substituted.

10. In sub-section (1) of section 398 of the principal Act—

Amendment
of section
398.

(a) in clause (a), for the words “are being conducted”, the words “are being conducted in a manner prejudicial to public interest or” shall be substituted;

25 (b) in clause (b), for the words “will be conducted”, the words “will be conducted in a manner prejudicial to public interest or” shall be substituted.

11. In sub-section (1) of section 408—

Amendment
of section
408.

30 (a) after the words “if the Central Government”, the words “of its own motion or” shall be inserted.

(b) after the words “interests of the company”, the words “or to public interest” shall be inserted.

12. In Part VI of the principal Act, in Chapter VII, after section 415, the following section shall be inserted, namely:—

Insertion of
new section
after section
415.

35 “415A. The provisions of this Chapter shall apply in relation to the Company Law Board as they apply in relation to the Central Government in respect of any matter in relation to

Provisions of
this Chapter
to apply to
Company
Law Board
in certain
cases

which the powers and functions of the Central Government under sections 410 and 411 have been delegated to the Company Law Board under section 637.”.

Insertion of
new section
635A after
section 635.

13. After section 635 of the principal Act, the following section shall be inserted, namely:— 5

Protection of
acts done in
good faith.

“635A. No suit, prosecution or other legal proceeding shall lie against officers of Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.”.

Amendment
of section
637.

14. For sub-sections (1) and (2) of section 637 of the principal ¹⁰ Act, the following sub-sections shall be substituted, namely:—

“(1) The Central Government may, by notification in the Official Gazette and subject to such conditions, restrictions and limitations as may be specified therein, delegate—

(a) any of its powers or functions under this Act (other ¹⁵ than the power to make rules) to the Company Law Board;

(b) any of its powers or functions under this Act, other than those specified in sub-section (2), to such other authority or such officer as may be specified in the notification.

(2) The powers and functions which cannot be delegated ²⁰ under clause (b) of sub-section (1) are those conferred by or mentioned in the following provisions of this Act, namely, sections 10, 89(4), 211(3) and (4), 212, 213, 235, 237, 239, 241, 242, 243, 244, 245, 247, 248, 249, 250, 259, 268, 269, 274(2), 295, 300, 310, 311, 324, 326, 328, 329, 332, 343, 345, 346, 347(2), 25 349, 352, 369, 372, 396, 399(4) and (5), 401, 408, 409, 410, 411(b), 448, 609, 613, 620, 638, 641 and 642.”.

STATEMENT OF OBJECTS AND REASONS

In order to facilitate quick action against persons involved in cases of fraud, misfeasance and other such malpractices and irregularities in the management of companies, it is considered necessary to set up a Tribunal whose findings would enable the Central Government to remove such persons from positions of managerial authority in any company. This Tribunal will also be empowered to hear certain applications under section 203 and sections 397 and 398 of the Companies Act, as these relate to matters of a similar nature. The scope of sections 397 and 398 and other related sections is being enlarged to provide for the entertainment of applications on grounds of public interest as well besides those stated therein. This Tribunal will also be empowered to exercise the powers and functions of the court under such sections of the Companies Act as the Central Government may, from time to time, notify.

In order to prevent the use of voting rights attached to shares held by trusts for the advancement of personal interests of the donors, it is considered necessary to regulate the exercise of such rights in suitable cases. For this purpose, it is proposed to empower the Central Government to appoint a person to exercise voting rights in respect of trusts with significant share holding, when necessary, with a view to securing proper management of the company in the interests of the shareholders.

In cases where Government has advanced a loan to a company, it is considered necessary that Government should have the power to direct the conversion of such a loan into shares of that company on fair and equitable terms. Where the loan agreement provides for such conversion, it is proposed to dispense with the procedure prescribed under section 81 of the Companies Act in regard to such conversion of loans given by Government and specified financial institutions. Section 81 is proposed to be amended accordingly.

Further, it is considered desirable, for the better and convenient administration of the Companies Act, to set up a Board to which will be entrusted most of the powers and functions of the Central

Government under the Companies Act or other laws. The Board will function subject to the control of the Central Government in all matters.

The Bill seeks to amend the Companies Act to give effect to the above proposals.

T. T. KRISHNAMACHARI.

NEW DELHI;

The 14th November, 1963.

FINANCIAL MEMORANDUM

The Bill seeks *inter alia* to set up a Tribunal to enquire into cases of mis-conduct of various types on the part of company managements and an administrative Board to exercise such powers and functions of the Central Government under the Companies Act or under any other law, as may be assigned to that Board by that Government.

The provision for the setting up of a Tribunal will necessitate the appointment of Chairman and Members of the Tribunal and some additional staff. As far as can be anticipated at present, the expenditure on this account together with incidental expenses on administration to be met out of the Consolidated Fund of India is estimated at about Rs. 1,50,000 per annum as indicated below:

<i>Requirement of personnel and finances.</i>				
<i>1. Officers</i>	<i>No.</i>	<i>Annual emoluments</i>	<i>Cost in Rs.</i>	
Chairman of Tribunal	1	1 X 42,000	42,000	
Members of Tribunal	2	2 X 27,000	54,000	
Registrar	1	1 X 9,000	9,000	
Company Accountant	1	1 X 7,200	7,200	
<i>2. Staff consisting of Stenographers and Lower Division Clerks</i>			13,200	
<i>3. Incidental expenses including Class IV staff, travelling allowances, accommodation, furniture, etc.</i>			25,000	
		<i>Total</i>	<i>1,50,400</i>	
		<i>Or say</i>	<i>1,50,000</i>	

The provision for the setting up of a Board may not involve any fresh expenditure from the Consolidated Fund as it is expected that the Board would be able to function with the help of the officers and staff who are now borne on the strength of the Department of Revenue for dealing with the administration of the Companies Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3, 4 and 6 of the Bill empower the Central Government to make rules in respect of matters which, *inter alia*, relate to the strength of every Bench of the Tribunal, the procedure of the Tribunal and Benches thereof, the procedure to be followed by the proposed Board of Company Law Administration, and the form in which a declaration may be made under sub-section (1) of the proposed section 153A.

The matters in respect of which rules may be made are matters of procedure or administrative detail. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 47 OF 1963

A Bill to provide, in the economic and financial interests of the community, for the control of the production, supply, distribution, use and possession of, and business in, gold and ornaments and other articles of gold and for matters connected therewith.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

(d) "dealer" means any person who carries on, directly or otherwise, the business of—

(1) making, manufacturing, preparing, buying, selling, supplying, distributing, melting, processing or converting ornaments, 5

(2) buying, selling, supplying or distributing gold for the purpose of making, manufacturing or preparing ornaments, 10

(3) melting, processing or converting gold for the purpose of making, manufacturing or preparing ornaments, 10
whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes—

(a) an undivided Hindu family which carries on such business;

(b) a local authority, company, society registered under 15
the Societies Registration Act, 1860, co-operative society registered under any law with respect to co-operative societies, club, firm or other association which carries on such business, or 21 of 1860.

(i) buys ornaments, or gold for the purpose of making ornaments, from, or 20

(ii) makes or manufactures ornaments for,

(iii) processes, melts or converts ornaments, or gold for the purpose of making ornaments, for 25

(iv) sells, supplies or distributes ornaments, or gold for the purpose of making ornaments, to, 25

its members; and

(c) a commission agent, broker, *del credere* agent, auctioneer or other mercantile agent, by whatever name called, who carries on such business on behalf of any principal; 30

but does not include the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959, or any banking company as defined in clause (c) of sub-section (1) of section 5 of the Banking Companies Act, 1949, in so far as such bank sells or transfers or exhibits for sale or transfer any gold. 35 10 of 1949.

Explanation.—For the purposes of this Act—

(a) every person who acts as an agent of a dealer residing outside India and carries on the business of such dealer in India or acts on behalf of such dealer as— 40

(i) a mercantile agent as defined in the Sale of Goods Act, 1930; or 3 of 1930.

(ii) an agent for handling gold or documents of title relating to gold; or

5 (iii) an agent for the collection or payment of sale price of gold or as a guarantor for such collection or payment; and

(b) every branch in India of a firm or company having its registered office outside India,

shall be deemed to be a dealer;

10 (e) "gold" means gold, including its alloy, whether virgin, melted, re-melted, wrought or unwrought in any shape or form, of a purity of not less than nine carats and includes any gold coin (whether legal tender or not), any ornament and any other article of gold;

15 (f) "ornament" means any article in a finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of, or manufactured from, gold, whether or not set with stones or gems, real or artificial, or with pearls, real, cultured or imitation or with all or any of them and includes parts, pendants or broken pieces of ornaments;

20 (g) "prescribed" means prescribed by rules made under this Act;

25 (h) "primary gold" means gold in any unfinished form and includes all ingots, bars, blocks, slabs, billets, shots, pellets, rods and wires;

(i) "refiner" means the owner or occupier of a refinery;

(j) "refinery" means a place where gold is melted, processed, converted or refined.

CHAPTER II

CONTROL OF BUSINESS IN GOLD

3. (1) Subject to the other provisions of this Act,—

(a) a dealer shall not make, manufacture or prepare—

(i) any article of gold other than ornament, or

(ii) any article containing gold of any purity;

35 (b) a refiner shall not make, manufacture or prepare—

(i) any article of gold other than primary gold, or

(ii) any article containing gold of any purity; and

Prohibition of manufacture of articles of gold in certain cases.

(c) any other person shall not make, manufacture or prepare any article of gold or any article containing gold of any purity,

unless such dealer, refiner or other person is authorised by the Administrator by general or special order to make, manufacture or prepare such article. 5

(2) A certified goldsmith may, and no other dealer shall, accept any ornament having gold of a purity exceeding fourteen carats for polishing or repair.

(3) A dealer may accept any ornament having gold of any purity 10 for the purpose of making, manufacturing or preparing new ornament or ornaments having gold of a purity not exceeding fourteen carats:

Provided that a certified goldsmith may, in accordance with the 15 provisions of section 13, accept any ornament having gold of a purity exceeding fourteen carats for the purpose of making, manufacturing or preparing new ornaments having gold of a purity exceeding fourteen carats.

Restrictions on the making, etc., of ornaments and other articles of gold.

4. (1) Save as provided in section 13,—

(a) no dealer, whether licensed under this Act or not, shall— 20
 (i) make, manufacture or prepare, or
 (ii) sell or otherwise transfer, agree to sell or otherwise transfer, or expose or offer for sale or transfer, and

(b) no person shall place any order with any dealer, whether licensed under this Act or not, for the making, manufacture 25 or preparation of,

any ornament having gold of a purity exceeding fourteen carats.

(2) No person shall make or manufacture any article of gold of a purity exceeding fourteen carats:

Provided that—

(i) any refiner may, if authorised by the Administrator to do so by general or special order, make, manufacture or have in his possession, custody or control any primary gold containing gold of a purity exceeding fourteen carats, and

(ii) any refiner or dealer who as such refiner or dealer 35 acquires or comes into the possession of any primary gold, or ornament or other article of gold, of a purity exceeding fourteen carats under any provision of this Act shall convert that gold,

ornament or article into gold of a purity not exceeding fourteen carats within such period as the Administrator may by general or special order grant.

(3) Notwithstanding anything contained in sub-section (1) or 5 sub-section (2), the Administrator may by general or special order permit any person to make, manufacture or prepare any ornament, or other article of gold, of a purity exceeding fourteen carats subject to such conditions and restrictions as may be specified in the order.

(4) Every person who makes, manufactures or sells any primary 10 gold shall put a stamp on each piece of primary gold,—

(i) certifying the purity of gold contained in such primary gold and the date of making or manufacturing thereof; and

(ii) containing such descriptive and other particulars which 15 may enable the identification of the maker or manufacturer of such primary gold, as may be prescribed.

(5) No stamp referred to in sub-section (4) shall be used in stamping any primary gold unless such stamp has been approved and registered by the Administrator.

5. (1) Except in the case of any quantity of gold acquired after 20 the date of making any return under this Act, no dealer, and no refiner, who is licensed under this Act, shall have in his possession or 25 under his control any gold which has not been included in such return: Restrictions on possession and sale of gold.

Provided that any gold acquired after the date of making such 25 return shall be included in the next succeeding return.

(2) Save as otherwise provided in this Act,—

(a) a refiner may sell or deliver gold only to a dealer licensed under this Act in accordance with the conditions and restrictions, if any, contained in the dealer's licence but shall not 30 sell or deliver gold to any other person:

Provided that a refiner may sell gold to any person on production by that person of a permit granted by the Administrator in this behalf or to such other person as the Administrator may, by general or special order, authorise in this behalf;

35 (b) a dealer licensed under this Act may, in accordance with the conditions and restrictions, if any, contained in his licence, buy or otherwise acquire, or agree to buy or otherwise

acquire, gold, not being ornament, only from a dealer, or refiner, licensed under this Act but not from any other person:

Provided that any such dealer may buy or otherwise acquire or accept gold, not being ornament, from any person if such gold has been included in a declaration made by that person ⁵ under Part XII A of the Defence of India Rules, 1962, or under section 16, or if in respect of such gold no such declaration is required and a permit has been obtained under sub-section (3);

(c) a dealer licensed under this Act may, in accordance with the conditions and restrictions, if any, contained in his licence— ¹⁰

(i) sell or otherwise transfer, or agree to sell or otherwise transfer, or

(ii) expose or offer for sale or transfer,

gold, not being ornament, only to a dealer, or refiner, licensed under this Act but not to any other person: ¹⁵

Provided that a dealer licensed under this Act may sell gold, not being ornament, to any person on production by that person of a permit granted by the Administrator in this behalf;

(d) a person other than a dealer licensed under this Act shall not buy or agree to buy or otherwise acquire or agree to ²⁰ acquire gold, not being ornament, except in accordance with a permit granted by the Administrator or in accordance with such authorisation as the Administrator may, by general or special order, make in this behalf, nor shall he otherwise acquire or agree to acquire such gold except by succession, in- ²⁵ testate or testamentary:

Provided that a refiner may buy or accept gold from a dealer licensed under this Act;

(e) a person acquiring gold in accordance with any general or special authorisation made by the Administrator shall not— ³⁰

(i) sell or otherwise transfer, or agree to sell or otherwise transfer, or

(ii) expose or offer for sale or transfer,

such gold to any person other than a person authorised by the Administrator by general or special order in this behalf. ³⁵

(3) Any gold (other than ornament) which is not required to be declared under this Act may be sold or otherwise transferred or hypothecated, pledged, mortgaged or charged under and in accordance with a permit granted by the Administrator in this behalf.

6. (1) No person shall make, advance or grant any loan to any other person on the hypothecation, pledge, mortgage or charge of any gold other than ornament unless a permit has been obtained under sub-section (3) of section 5 or unless such gold has been included, if so required, in a declaration or a further declaration made under Part XII A of the Defence of India Rules, 1962, or under section 16.

(2) No person who is a dealer, whether licensed or not, shall—

10 (a) carry on business as a dealer in the same premises in which he or any other person carries on business as a money-lender or banker involving the hypothecation, pledge, mortgage or charge of any gold,

15 (b) (i) sell or otherwise transfer to any person any gold on the hypothecation, pledge, mortgage or charge of which he has advanced any loan, whether before or after the 10th day of January, 1963, or

(ii) return such gold to the borrower, whether before or after the repayment of the loan,

except under and in accordance with such conditions, limitations or 20 restrictions, if any, as may be imposed by the Administrator in this behalf.

(3) No pawnee who is not a dealer shall sell any gold pledged with him, on the failure of the pawnor to redeem such gold, except in accordance with such conditions as may be prescribed.

25

CHAPTER III

LICENSING OF DEALERS AND REFINERS AND CERTIFICATION OF GOLDSMITHS

7. (1) Save as otherwise provided in this Act, no dealer who is registered under any law with respect to sales tax shall carry on business as such dealer unless he holds a valid licence issued in this behalf by the Administrator.

(2) A licence issued under sub-section (1) may contain such conditions and restrictions as the Administrator may think fit to impose and different conditions and restrictions may be imposed for different classes of dealers.

35 (3) Every dealer who is registered under any law with respect to sales tax shall, as soon as possible after such registration and in any case before the expiry of thirty days thereafter, make to the

Administrator an application in such form and on payment of such fee as may be prescribed, for the issue of a licence under this section.

(4) Any dealer who is not required to be registered under any law with respect to sales tax may, if he likes, also make to the Administrator an application in accordance with the foregoing provisions for the issue of a licence under this section and any licence issued in pursuance of such application may contain such conditions and restrictions as the Administrator may think fit to impose and different conditions and restrictions may be imposed for different classes of applicants. 5 10

(5) Nothing in the foregoing provisions of this section shall be deemed to prohibit any dealer who is required to apply for a licence under this section from carrying on his business as such dealer for the period within which he is required to apply for such licence and if he has applied for such licence, until he is granted a licence or is, 15 by a notice in writing, informed by the Administrator that a licence cannot be granted to him.

(6) On the receipt of an application for the issue of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing 20 either grant the licence or reject the application for the same:

Provided that no application for the issue of a licence made by a dealer registered under any law with respect to sales tax whether before or after the commencement of this Act shall be rejected unless the Administrator is satisfied that any statements made in the application for the issue of the licence are incorrect or false in material particulars or that the applicant for the licence has contravened any of the provisions of this Act and unless the applicant for the licence has been given a reasonable opportunity of showing cause against such rejection. 25 30

(7) A licence granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fee as may be prescribed and the provisions of this section relating to the first issue of a licence shall apply as far as may be in relation to such renewal. 35

(2) A licence issued under sub-section (1) may contain such conditions and restrictions as the Administrator may think fit to impose and different conditions and restrictions may be imposed for different classes of refiners.

5 (3) Every person who intends to carry on business as a refiner may, if he had a refinery in existence immediately before the 10th day of January, 1963, make to the Administrator an application in such form and on payment of such fee as may be prescribed, for the issue of a licence under sub-section (1).

10 (4) A person to whom a licence to carry on business as a refiner is issued under sub-section (1) shall not carry on business as such refiner in the same premises in which he or any other person carries on business as a dealer or business as a money-lender or banker involving the hypothecation, pledge, mortgage or charge of any gold.

15 (5) Notwithstanding anything contained in sub-section (1), a refiner who has made an application under sub-section (3) for the issue of a licence to carry on business, may carry on business as a refiner, pending the grant of a licence unless he is, by a notice in writing, informed by the Administrator that the application has been 20 rejected:

(6) No person shall establish any refinery unless he has obtained a valid licence from the Administrator on an application in accordance with the foregoing provisions for the issue of a licence under this section.

25 (7) On the receipt of an application for the issue of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing either grant the licence or reject the application for the same:

Provided that no application for the issue of a licence made by a 30 refiner shall be granted unless the Administrator is satisfied having regard to—

(a) the number of refineries existing in the area in which the applicant intends to carry on business as a refiner,

(b) the demand for primary gold in that area,

35 (c) the facilities existing in that area for the assay of gold by any method other than the touch-stone method,

(d) the turnover of the applicant during the year immediately before the 10th January, 1963, or immediately before the date of the application for the issue of the licence, whichever is later,

(e) the suitability or otherwise of the applicant, and
 (f) the public interest,

that the licence applied for should be granted:

Provided further that no application for the issue of a licence made by a refiner shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against such rejection.

(8) A licence granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fee as may be prescribed and the provisions of this section relating to the first issue of a licence shall apply as far as may be in relation to such renewal.

Cancellation of licences by Administrator. 9. A licence granted under section 7 or section 8 shall be cancelled by the Administrator if he is satisfied that any statements made in the application for the issue of the licence or in relation to the licence are incorrect or false in material particulars or that the holder of the licence has contravened any of the provisions of this Act: .

Provided that no licence shall be cancelled unless reasonable opportunity has been given to the holder thereof to show cause why the licence shall not be cancelled.

Cancellation of licence on application by dealer or refiner. 10. A dealer who ceases to be registered under any law with respect to sales tax or who discontinues his business in gold or a refiner who discontinues his business as such may make an application to the Administrator for cancellation of his licence as dealer or refiner, as the case may be, and thereupon the Administrator may cancel his licence.

Disposal of gold in the possession of dealers or refiners in certain cases. 11. A dealer who, being required by section 7 to make an application for a licence, has failed to do so within the period specified therefor or whose application for the issue of a licence has been rejected or whose licence has been cancelled or a refiner whose application for the issue of a licence under section 8 has been rejected or whose licence has been cancelled shall not, after the expiry of that period or after such rejection or cancellation, as the case may be, carry on his business and shall within thirty days from the date of such expiry, rejection or cancellation, sell or otherwise transfer to any dealer or refiner licensed under this Act the entire quantity of gold including ornaments, in his possession on the date of such expiry, rejection or cancellation and send intimation thereof to the Administrator.

12. Every dealer and every refiner who is licensed under this Act shall display his licence at a conspicuous place of the premises in which the business of such dealer is carried on or the premises in which the refinery is located.

13. (1) A dealer who is not required by sub-section (3) of section 7 to make an application for the issue of a licence under that section and has not obtained any licence in pursuance of an application made by him under sub-section (4) of that section and who does not employ hired labour in actually making, manufacturing or preparing any ornament and is not himself in the employment of another dealer may, if he was carrying on business as a dealer for more than a year immediately before the 10th day of January, 1963,—

(a) accept from any person, not being a refiner or a certified goldsmith or other dealer, any ornament or ornaments having gold of a purity exceeding fourteen carats for the purpose of making, manufacturing or preparing, and

(b) make, manufacture or prepare, new ornament or ornaments from that ornament or those ornaments so however that the purity and the total quantity of gold contained in such new ornament or ornaments do not exceed the purity and the total quantity of gold contained in the ornament or ornaments accepted.

(2) No such dealer shall accept any such ornament or ornaments for the purpose of making, manufacturing or preparing new ornament or ornaments as aforesaid after such date as the Central Government may, by notification in the Official Gazette, specify, unless before that date he has obtained, on an application made in that behalf to the Administrator, a certificate recognising him as a goldsmith in such form and on payment of such fee as may be prescribed.

(3) On receipt of an application under sub-section (2), the Administrator, may, after making such inquiry as to the antecedents of the applicant and the provision, if any, which has been made for the grant of assistance to the family of the applicant by Government or any Government-sponsored agency and after considering the desirability or otherwise of increasing the number of persons making, manufacturing or preparing ornaments in the area in which the applicant was carrying on business, by order in writing either grant the certificate or reject the application for the same:

Provided that no application for the grant of a certificate shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against such rejection.

(4) A certificate granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fee as may be prescribed and the provisions of this section relating to the first issue of a certificate shall apply as far as may be in relation to such renewal. 5

(5) A certificate granted under this section may be cancelled by the Administrator—

(i) if the certified goldsmith is, at any time after the grant of the certificate to him, registered under any law with respect to sales tax, or 10

(ii) on an application made to the Administrator for such cancellation by the certified goldsmith who ceases to work as a goldsmith, or

(iii) if the Administrator is satisfied that any statements made in the application for the issue of the certificate or in 15 relation to the certificate are incorrect or false in material particulars or that the holder of the certificate has contravened any of the provisions of this Act:

Provided that no certificate shall be cancelled under clause (i) or clause (iii), unless reasonable opportunity has been given to the 20 holder thereof to show cause why the certificate shall not be cancelled.

(6) Every certified goldsmith shall have in his possession the certificate granted to him while he carries on business as such goldsmith and shall produce it for inspection on demand by any officer 25 authorised by the Administrator in this behalf.

(7) Notwithstanding anything contained in section 4, a certified goldsmith may have in his possession, custody or control primary gold of a purity exceeding fourteen carats by melting or processing or converting any ornament which has been accepted by him under 30 this section for making, manufacturing or preparing new ornament or ornaments:

Provided that a certified goldsmith shall not have at any time in his possession, custody or control any quantity of such primary gold in excess of one hundred grammes obtained in the process of 35 making, manufacturing or preparing new ornament or ornaments.

14. (1) No dealer who has not obtained a licence under section 7 or a certificate under section 13 shall carry on business as a dealer unless he has been registered and possesses a certificate.

Registration and
certifica-
tion of
dealers
not fall-
ing under
section 7
or 13.

(2) Every such dealer shall make an application for the grant of 40 a certificate within such time, in such form and on payment of such fee as may be prescribed.

(3) If the Administrator is satisfied that an application for registration is in order, he shall, in accordance with such rules as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form:

5 Provided that no application for the grant of a certificate of registration shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against such rejection.

(4) A certificate granted under this section shall be valid for the period specified therein and may be renewed from time to time for 10 such period and on payment of such fee as may be prescribed, and the provisions of this section relating to the first issue of a certificate shall apply as far as may be in relation to such renewal.

(5) The provisions of sections 9, 10, 11 and 12 shall, as far as may be, apply to a dealer registered under this section as they apply 15 to a dealer licensed under section 7.

(6) Nothing in this section shall be deemed to prohibit any dealer who has been registered under this section from applying at any time for a licence under section 7 if he likes to do so and on his being licensed under section 7, the registration certificate issued to 20 him under this section shall be cancelled.

15. (1) Notwithstanding anything contained in Chapter II and Special provisions regarding religious institutions such as a temple, mutt, church, mosque, gurudwara or any other public place of public religious worship, not being a dealer or refiner licensed 25 under this Act, may receive gold in any form as offering.

(2) Any such institution—

(a) may retain the gold in the form in which it is received as offering so long as it is used exclusively for the purposes of the institution;

30 (b) shall not convert any gold in its possession into gold of a purity exceeding fourteen carats or make, manufacture or prepare ornament or any other article of gold of a purity exceeding fourteen carats unless such institution has been authorised by the Administrator by general or special order subject to such conditions as may be laid down, to do so;

35 (c) shall not sell or otherwise transfer gold in any form in its possession unless such gold has been converted into gold of a purity not exceeding fourteen carats and unless, in the case of gold other than ornament, the sale or transfer is to a dealer or 40 refiner licensed under this Act;

(d) shall maintain such accounts and submit such returns as to the quantity, description and other particulars of gold possessed, received, sold or otherwise transferred by it, as may be prescribed.

(3) The person in charge of the management of any such institution shall be responsible for anything done or omitted to be done under this section. 5

CHAPTER IV

DECLARATION OF GOLD

Declaration as to possession of gold other than ornaments.

16. (1) If any person who has made a declaration as to gold other than ornaments owned by him under Part XII A of the Defence of India Rules, 1962, acquires by succession, intestate or testamentary, or in accordance with a permit granted by the Administrator, or parts with, after such declaration any quantity of gold, not being ornament, he shall, as often as he acquires or parts with any quantity 10 of gold, make within thirty days from the date of such acquisition or parting with, a further declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such gold acquired or parted with by him and giving the prescribed particulars of the person from whom such gold 15 was acquired or in whose favour such gold was parted with, as the case may be. 20

(2) If any person who did not own any gold, not being ornament, at any time during the period commencing on the 10th January, 1963, and ending with the 9th February, 1963, acquires, after the 25 expiry of that period by succession, intestate or testamentary, or in accordance with a permit granted by the Administrator any quantity of gold, not being ornament, he shall, within thirty days from the date of such acquisition, make a declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such gold owned by him on the date of such declaration. 30

(3) If any person who has made a declaration under sub-section (2) acquires by succession, intestate or testamentary, or in accordance with a permit granted by the Administrator, or parts with, any 35 quantity of gold, not being ornament, he shall, as often as he acquires or parts with any quantity of gold, make within thirty days from the date of such acquisition or parting with a further declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such gold acquired or 40 parted with by him and giving the prescribed particulars of the

person from whom such gold was acquired or in whose favour such gold was parted with, as the case may be.

(4) For the removal of doubt, it is hereby declared that a declaration referred to in this section and section 17 shall be made—

- 5 (a) in the case of gold belonging to a minor or a lunatic, by the guardian or manager of such minor or lunatic, as the case may be;
- 10 (b) in the case of gold belonging to an idol or a deity, by the manager of such idol or deity, whether known as *shebait* or manager or by any other name;
- 15 (c) in the case of gold belonging to a person whose properties are under the management of a Court of Wards, by the manager of such Court;
- (d) in the case of gold belonging to a person whose properties are under the management of any administrator or receiver, by such administrator or receiver;
- (e) in the case of gold vested in an executor or an administrator of a will or other testamentary disposition, by such executor or administrator;
- 20 (f) in the case of gold belonging to the members of a firm, by any partner of such firm;
- (g) in the case of gold belonging to an undivided Hindu family, by the head or *karta* of such family;
- 25 (h) in the case of gold which is the subject matter of any public or private trust, by a trustee of such trust;
- (i) in the case of gold belonging to a company incorporated outside India, by any person in charge of the management of such company in India;
- 30 (j) in the case of gold belonging to a temple, mutt, church, mosque or any other religious institution by the person in charge of the management of such temple, mutt, church, mosque or other religious institution;
- (k) in the case of gold which is wakf property, by the mutawalli of such wakf;
- 35 (l) in the case of gold belonging to any society, club or other association, by the secretary or manager of such society, club or other association.

(5) No person who is required to make a declaration as to gold other than ornament owned by him under the Defence of India Rules

1962, or this section or exempted from making such declaration under the said Rules or sub-section (6) of this section shall, after the commencement of this Act, acquire any gold other than ornament except—

- (a) by succession, intestate or testamentary, or 3
- (b) in accordance with a permit granted by the Administrator in this behalf.

(6) No declaration or further declaration shall be required to be made under the foregoing provisions of this section in respect of—

- (a) any gold, whether contained in one or more pieces, owned by a minor unless the weight of such gold exceeds twenty grammes; 10
- (b) any gold, whether contained in one or more pieces, owned by an individual other than a minor unless the weight of such gold exceeds fifty grammes; 15
- (c) any gold, whether contained in one or more pieces, referred to in clauses (b) to (l) of sub-section (4), unless the weight of such gold exceeds fifty grammes.

(7) Any person in possession or control of any gold, not being ornament, shall be presumed, until the contrary is proved, to be the 20 owner thereof.

**Declar-
ation as to
possession
of orna-
ments.**

17. (1) Where the Central Government is of the opinion that it is necessary so to do for carrying out the purposes of this Act, that Government may at any time, by general or special order, require that any person or class of persons owning ornaments shall, within 25 such period as may be specified in the said order, make a declaration to the Administrator in the prescribed form as to the quantity, description and other prescribed particulars of the ornaments owned by such person or each person in that class:

Provided that it shall not be necessary to make any such declaration where the quantity or value of the ornaments owned by a person does not exceed such limit as may be specified in the said order by the Central Government. 30

Explanation.—For the purposes of this section, any person in possession or control of any ornament shall be presumed, until the 35 contrary is proved, to be the owner thereof.

(2) If any person who has made a declaration under sub-section (1) acquires or parts with any ornament after such declaration, he shall, as often as he acquires or parts with any ornament, make within thirty days from the date of such acquisition or parting 40

with a further declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such ornament acquired or parted with by him and giving the prescribed particulars of the person from whom such ornament was acquired or in whose favour such ornament was parted with, as the case may be.

(3) If any person who, at any time during the period within which the declaration referred to in sub-section (1) is to be made, does not own any ornament, or owns ornaments not exceeding in quantity or value such limit as may be specified by the Central Government under sub-section (1), acquires thereafter any ornament or ornaments so as to exceed such limit, he shall, within thirty days from the date the limit is exceeded, make a declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such ornament or ornaments owned by him on the date of such declaration.

(4) If any person who has made a declaration under sub-section (3) acquires or parts with any quantity of ornaments, he shall, as often as he acquires or parts with any quantity of ornaments, make, within thirty days from the date of such acquisition or parting with, a further declaration to the Administrator as provided in sub-section (2).

CHAPTER V

ADMINISTRATOR

25 18. (1) The Central Government shall, by notification in the Official Gazette, appoint an Administrator for carrying out the purposes of this Act.

Appoint-
ment and
functions
of Admin-
istrator.

(2) The Administrator shall discharge his functions subject to the general control and directions of the Central Government.

30 (3) The Administrator may by general or special order authorise such person (including any officer or authority subordinate to a State Government) as he thinks fit to exercise all or any of the powers exercisable by him under this Act and different persons may be authorised to exercise different powers:

35 Provided that no officer below the rank of Collector of Customs or Central Excise or Collector of a district shall be authorised to hear appeals under sub-section (2) of section 30.

(4) Subject to any general or special direction given or condition attached by the Administrator, any person authorised by the Administrator to exercise any powers may exercise those powers in the

same manner and with the same effect as if they had been conferred on that person directly by this Act and not by way of authorisation.

CHAPTER VI

RETURNS AND ACCOUNTS

Returns
as to
gold.

19. Dealers (including certified goldsmiths) and refiners, shall furnish to the Administrator such returns as to the quantity, description and other prescribed particulars of gold in their possession or under their control in such form and within such time as may be prescribed, and different returns may be prescribed for different classes of dealers or refiners. 5

10

Accounts.

20. (1) Dealers (including certified goldsmiths) and refiners shall keep such accounts and in such form and manner as may be prescribed of the gold held, bought or sold or otherwise received or disposed of by them, in respect of each transaction and different accounts may be prescribed for different classes of dealers or refiners. 15

15

(2) Every such dealer, certified goldsmith and refiner shall, if so required by the Administrator,--

(a) produce before the Administrator any account, register or other document, and

(b) furnish to the Administrator any information relating 20 to the quantity of gold in his possession or under his control or to the purchase, sale or delivery of gold by him.

(3) All accounts, registers and other documents, relating to any quantity of gold or to the purchase, sale or delivery thereof and any gold in the possession or under the control of the dealer, refiner or 25 certified goldsmith, wherever kept, shall be open to inspection by any person authorised by the Administrator in this behalf.

CHAPTER VII

MISCELLANEOUS PROVISIONS

Power of
Administrator to
issue

21. (1) The Administrator may, if he thinks fit, issue directions 20 or orders, not inconsistent with this Act, for carrying out the purposes of this Act.

Directions
and orders.

(2) The Administrator, so far as it appears to him to be necessary or expedient for securing the equitable distribution and availability at fair prices of gold and ornaments, may by order published 35 in the Official Gazette—

(a) regulate the prices at which any gold or ornament may be bought or sold by any dealer or refiner and

(b) regulate by licences, permits or otherwise, the distribution, transport, disposal, acquisition, possession, use or consumption of gold by dealers or refiners or other persons.

22. Any person authorised by the Administrator by general or Persons special order, or holding a permit issued by the Administrator, for buying or otherwise acquiring gold shall observe such conditions, be subject to such restrictions and furnish such accounts or returns, or both, to the Administrator as may be prescribed.

23. No person,—

(a) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, shall let the same or any part thereof with the knowledge that the same or part thereof is intended to be used as a refinery or wilfully allow any person to use such premises or any part thereof as a refinery unless the refiner has been licensed under this Act; or

(b) being the tenant, lessee or occupier or any person in charge of any premises, shall use or allow any person to use such premises or any part thereof as a refinery unless the refiner has been licensed under this Act.

24. Where the business of a dealer licensed or registered under this Act or a refinery is transferred by sale, gift, bequest or otherwise or is transmitted by inheritance or is transferred by way of lease, the transferee, heir or lessee shall not carry on such business or run the refinery either in his own name or in some other name unless the transferee, heir or lessee has, before the expiry of thirty days after the date of such transfer or transmission, made to the Administrator an application for the issue of a licence or certificate of registration in accordance with the provisions of section 7 or section 8 or section 14:

Provided that nothing in this section shall be deemed to prohibit the transferee, heir or lessee from carrying on business as a dealer or refiner for the period within which he is required to apply for such licence or registration and if he has applied for such licence or registration, until he is granted the licence or certificate of registration or is, by a notice in writing, informed by the Administrator that such licence or certificate cannot be granted to him.

25. (1) All particulars contained in any return or declaration made or accounts, registers or other documents produced in accordance with this Act shall, save as otherwise provided in sub-section (4), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall be entitled

to require the Administrator or any person authorised by the Administrator under this Act or any officer or other employee of the Government to produce before it any such return, declaration, accounts, registers or other documents or any part thereof or to give evidence before it in respect thereof. 5

(2) Any person authorised by the Administrator under this Act and any other person discharging any functions in the implementation of the provisions of this Act shall not divulge any information relating to any particulars contained in any return or declaration made to, or any accounts, registers or other documents produced ¹⁰ before, or inspected by, the Administrator or any such person.

(3) The Administrator or any gazetted officer authorised by him in this behalf may request any officer of Government to furnish any information relating to any particulars contained in any return or declaration made to, or any accounts, registers or other documents ¹⁵ produced before or inspected by such officer of Government under the provisions of any law if, in the opinion of the Administrator or the gazetted officer aforesaid, such information is necessary for the implementation of the provisions of this Act; and when such request is made, the officer of Government shall comply with such request ²⁰ notwithstanding the provisions of any such law forbidding the furnishing of such information.

(4) Nothing in this section shall apply to and in relation to the disclosure of any of the particulars referred to in sub-section (1) or sub-section (2)— 25

(a) for the purposes of any prosecution for any offence, or

(b) to any officer or other employee of Government where it is necessary to make such disclosure to such officer or other employee for the purposes of this Act or of any other law.

Power to enter, search and seize, to obtain information and to take samples. 26. (1) Any person authorised by the Administrator in this ³⁰ behalf may—

(a) enter and search the establishment of a dealer or any refinery;

(b) seize any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, ³⁵ contravened, along with the package, covering or receptacle, if any, in which such gold is found;

(c) seize any books of account, return or any other document relating to any such gold.

(2) Any person authorised by the Central Government in this behalf may—

5 (a) enter and search any premises, not being a refinery or establishment referred to in sub-section (1), vaults, lockers or any other place whether above or below ground;

(b) seize any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be contravened, along with the package, covering or receptacle, if any, in which such gold is found;

10 (c) seize any books of account, return or any other document relating to any such gold.

(3) Any officer authorised by the Administrator in this behalf may search any person if that officer has reason to believe that such person has secreted about his person—

15 (a) any gold in respect of which such officer suspects that any provision of this Act has been, or is being, or is about to be, contravened,

(b) any document relating to such gold.

(4) When any such officer as aforesaid is about to search the 20 person referred to in sub-section (3), he shall, if such person so requires, take such person to the nearest gazetted officer authorised by the Administrator or to the nearest magistrate.

(5) Any officer authorised by the Administrator in this behalf 25 may, if he suspects that any person has contravened, or is contravening or is about to contravene any provision of this Act, detain such person and take him to a gazetted officer authorised by the Administrator or to a magistrate for a search of his person.

(6) A gazetted officer or magistrate before whom any person is brought shall, if he sees no reasonable ground for search, forthwith 30 discharge the person but otherwise shall direct that search be made.

(7) No female shall be searched by any one excepting a female.

(8) Any officer authorised by the Administrator in this behalf 35 may, if he has reason to believe that any person has contravened, or is contravening or is about to contravene, any provision of this Act, arrest such person and shall as soon as possible inform him of the grounds for such arrest and shall take such arrested person to the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be

detained in custody beyond the said period without the authority of a magistrate.

(9) Any officer who has arrested any person under this section shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the 5 officer-in-charge of a police station has and is subjected to under the Code of Criminal Procedure, 1898.

5 of 1898

(10) Any officer authorised by the Administrator in this behalf may, if he has reason to believe that any aircraft, vehicle or animal or any vessel is being, or is about to be, used for carrying any gold 10 in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened, at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and

(a) rummage and search any part of the aircraft, vehicle or 15 vessel;

(b) examine and search any goods in the aircraft, vehicle, vessel or on the animal;

(c) seize any such gold as is referred to above and any books of account or other document relating to such gold; 20

(d) break open the lock of any door or package for exercising the powers conferred by clauses (a), (b) and (c), if keys are withheld;

(e) if it becomes necessary to stop any such aircraft, vehicle or animal or vessel, he may use all lawful means for stopping it, 25 and where such means fail, the aircraft, vehicle, vessel or animal may be fired upon.

(11) The provisions of the Code of Criminal Procedure, 1898, 5 of 1898. relating to search and seizure shall, so far as they are applicable, apply in relation to search and seizure made under this section. 30

(12) The Administrator shall have power—

(a) to take samples of gold from any dealer, refiner or other person in such manner as may be prescribed;

(b) to send such sample for assay or analysis to such authority as may be prescribed and to require such authority to 35 send a report to the Administrator as a result of the assay or analysis.

27. (1) Any gazetted officer authorised by the Administrator in this behalf may hold an inquiry for the purpose of ascertaining whether any contravention of any of the provisions of this Act has been, is being, or is about to be, committed and shall for the purposes of such inquiry have power to summon any person whose attendance he considers necessary either to give evidence or to produce any document or other thing.

Power to hold inquiry and to call for information.

(2) The Administrator may call for information from any person for the purpose of ascertaining whether or not there has been any contravention of any of the provisions of this Act.

28. (1) The following conveyances shall be liable to **seizure and confiscation**:—

Confiscation of conveyances.

(a) any vessel which is or has been within the Indian waters, any aircraft which is or has been in India or any vehicle which is or has been in any area in India, while constructed, adapted, altered or fitted in any manner for the purpose of concealing gold;

(b) any conveyance from which the whole or any part of gold is thrown over-board, staved or destroyed so as to prevent seizure by any officer authorised by the Administrator;

(c) any conveyance which having been required to stop or land under sub-section (10) of section 26 fails to do so, except for good and sufficient cause;

(d) any conveyance from which any gold cleared for exportation is unloaded without the permission of the officer authorised by the Administrator in this behalf;

(e) any conveyance carrying imported gold which has entered India and is afterwards found with the whole or substantial portion of such gold missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the gold.

(2) Any conveyance or animal used as a means of transport or in the carriage of any gold in respect of which any provision of this Act has been, or is being or is about to be, contravened, shall be liable to **seizure and confiscation**, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken

all such precautions against such use as are for the time being specified in the rules made in this behalf by the Central Government:

Provided that where any such conveyance or animal is used for the carriage of goods or passengers for hire, the owner of the conveyance or animal shall be given an option to pay in lieu of confiscation of the conveyance or animal, a fine not exceeding the value of the gold which was sought to be so conveyed or carried.

Confiscation of gold seized and

29. (1) Any gold seized under section 26 together with the package, covering or receptacle, if any, in which such gold is found shall be liable to confiscation.

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imposition of penalty.

(2) Any person who in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under sub-section (1), or abets the doing or omission of such an act shall be liable, in addition to any liability for punishment under this Act, to a penalty not exceeding 15 five times the value of the gold or one thousand rupees, whichever is more.

Adjudication, appeal and revision.

30. (1) The confiscation and fine or penalty under section 28, section 29, proviso to sub-section (3) of section 31 or sub-section (7) of this section or under any rule made under this Act may be 20 adjudged—

(a) without limit, by an officer not below the rank of Collector of Customs or Central Excise;

(b) where the value of conveyance or gold or both together with the package, covering or receptacle, if any, in which such 25 gold is found, liable to confiscation does not exceed ten thousand rupees, or where the fine or penalty proposed to be imposed does not exceed two thousand rupees, by an officer not below the rank of Assistant Collector of Customs or Central Excise or by any other officer of the Central Government or a State Govern- 30 ment authorised by the Central Government in this behalf.

(2) An appeal shall lie to the Administrator—

(a) from every adjudication of confiscation or penalty under sub-section (1),

(b) from any other decision or order passed by an officer 35 not above the rank of Collector of Customs or Central Excise, within a period of three months from the date of the communication of the order or decision:

Provided that where the decision or order appealed against relates to any penalty levied under this Act, any person desirous of 40

appealing against such decision or order shall, pending the appeal, deposit the penalty levied:

Provided further that where in any particular case, the Administrator is of opinion that the deposit of penalty levied will cause undue hardship to the appellant, he may in his discretion dispense with such deposit, either unconditionally or subject to such conditions as he may deem fit.

5 of 1908. (3) Every person adjudicating under this section and the Administrator hearing any appeal under sub-section (2) shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- 15** (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

20 (4) Every person adjudicating under this section and the Administrator hearing any appeal shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898.

5 of 1898.

(5) The Central Government may, of its own motion or on application made by any person aggrieved by an appellate order of the Administrator under sub-section (2) within six months from the date of communication of such order, call for and examine the record of any proceeding in which the Administrator has passed an order on appeal for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order thereon as the Central Government thinks fit.

- (6) Notwithstanding anything contained in any other law—
 - (a) any order passed by the Central Government in revision;
 - (b) subject to such order of the Government, any order passed in appeal by the Administrator, and
 - 35** (c) subject to the final order of the Central Government in revision and the appellate order of the Administrator, any order of adjudication of confiscation or penalty, or any other decision or order referred to in clause (b) of sub-section (2),
- 40** shall be final and shall not be called in question in any court.

(7) Whenever confiscation of any gold or conveyance or animal is authorised by this Act, the officer adjudging it may give to the owner thereof an option to pay in lieu of confiscation such fine as the said officer thinks fit.

(8) For the removal of doubt it is hereby declared that the payment of fine in lieu of confiscation under sub-section (7) shall not prevent the infliction of any punishment to which the person affected is liable under the provisions of this Act.

Penalties. 31. (1) Whoever fails or omits to make any return as required by section 15 or 19 or any declaration including a further declaration as required by section 16 or 17 without any reasonable cause, or makes any statement in such return or declaration which is false and which he either knows or believes to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to one year or with fine or with both. 15

(2) Whoever,--

(i) refines, processes, melts, converts, deals or makes, manufactures or prepares any article of gold in contravention of any provision of this Act,

(ii) has in his possession or under his control any quantity 20 of gold in contravention of any provision of this Act,

(iii) sells or otherwise transfers or agrees to sell or transfer, or exposes or offers for sale or transfer, or delivers or otherwise parts with, any gold in contravention of any provision of this Act, 25

(iv) buys, or otherwise acquires, or accepts gold in contravention of any provision of this Act,

(v) allows any person to use any premises or any part thereof as a refinery in contravention of any provision of this Act, 30

(vi) makes, manufactures or prepares, or places any order for the making, or the manufacture or preparation of, sells or otherwise transfers or agrees to sell or transfer, or exposes or offers for sale or transfer any ornament or any primary gold in contravention of section 3 or section 4 or any other provision 35 of this Act,

(vii) possesses, delivers, sells or otherwise transfers any gold in contravention of the provisions of section 5 or section 6,

- (viii) carries on business as a dealer, refiner, banker or money-lender in contravention of the provisions of section 6, 7, 8 or 14,
- 5 (ix) carries on business as a certified goldsmith in contravention of the provisions of section 13,
- 10 (x) falsely stamps any primary gold with the intention of causing it to be believed that such primary gold contains gold of such purity as is mentioned in such stamp or sells or otherwise transfers, or agrees to sell or otherwise transfer or exposes or offers for sale or transfer any such falsely stamped primary gold,
- 15 (xi) makes or counterfeits any stamp intending that the same shall be used for the purpose of stamping any primary gold, knowing the same to be counterfeit, or uses any such counterfeit stamp,

shall be punishable with imprisonment for a term of not less than six months and not more than two years and also with fine.

(3) Whoever contravenes any other provision of this Act for which no punishment is provided in the foregoing provisions of this section shall be punishable with imprisonment for a term which may extend to one month or with fine or with both.

Provided that—

- 25 (i) whoever fails or omits to keep or to produce any account or other document or to furnish any information when required to do so under any provision of this Act;
- (ii) whoever fails or omits to display any licence as required by section 12,

shall be liable to a penalty not exceeding five hundred rupees.

5 of 1898. 30 (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be tried summarily by a magistrate.

35 32. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the

offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the ⁵ consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. ¹⁰

Explanation—For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm. ¹⁵

Limitation
of prose-
cutions.

33. No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Administrator or any person authorised by the Administrator in this behalf.

Protection
of action
taken in
good faith.

34. (1) No suit, prosecution or other legal proceedings shall lie ²⁰ against the Central Government or the Administrator or any person, authorised by the Central Government or the Administrator, or performing any functions in the implementation of the provisions of this Act, for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act or any rule or order ²⁵ made thereunder.

(2) No suit or other legal proceedings shall lie against the Central Government or the Administrator or any person, authorised by the Central Government or the Administrator, or performing any functions in the implementation of the provisions of this Act, for ³⁰ any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act or any rule or order made thereunder.

Adminis-
trator,
etc., to be
public
servants
and appli-
cation of
certain
provisions
of Central
Excises
and Salt
Act.

35. (1) The Administrator and any person authorised by him or the Central Government, and performing any functions in the imple- ³⁵ mentation of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. ^{45 of 1880.}

(2) The provisions of sections 11, 15 and 23 of the Central ^{Ex-} cises and Salt Act, 1944, relating to—

- (i) recovery of any sum payable to the Government, or ⁴⁰
- (ii) rendering of assistance by any officer of Police or Customs or Revenue, and

^{1 of 1944.}

(iii) failure of any Central Excise Officer, on duty, respectively, shall, as far as may be, apply in regard to like matters under the provisions of this Act.

36. Where on the recommendation of the Administrator or otherwise the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by order and subject to such conditions, if any, as it may specify in the order—

(a) exempt any dealer or any refiner or any other person from the operation of all or any of the provisions of this Act; and

(b) as often as may be, revoke any such order and again subject, by order any dealer or any refiner or any other person to the operation of such provisions.

37. The provisions of this Act or any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

38. Nothing in this Act shall apply to or in relation to—

(a) any gold belonging to, or in the possession or under the control of, the Government,

(b) any refinery owned or occupied, or any business of a dealer carried on, by the Government.

39. The Central Government may perform all or any of the functions of the Administrator and may, by notification in the Official Gazette, exercise all or any of the powers conferred by this Act on the Administrator, if that Government is of the opinion that it is necessary or expedient in the public interest so to do.

40. If in any territory there is no law with respect to the sales tax in force, then, every dealer carrying on his business as such dealer in that territory, whose annual turnover is not less than ten thousand rupees, shall be required to be licensed in accordance with the provisions of this Act as if he were a dealer registered under law with respect to sales tax and accordingly all the provisions of this Act shall apply to such registered dealer.

Presumption as to
orders.

41. Where an order purports to have been signed by any person authorised by the Administrator in this behalf in exercise of any power conferred by or under any provision of this Act, a court shall presume, within the meaning of the Indian Evidence Act, 1872, that such order was so made by that person. 5

Power to
make
rules.

42. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the additional particulars to be stamped on each piece 10 of primary gold;
- (b) the conditions subject to which a pawnee may sell gold pledged with him;
- (c) the forms of applications for the grant or renewal of licences, permits and certificates under this Act and the fees 15 payable in respect of such applications;
- (d) the forms of such licences, permits and certificates;
- (e) the procedure for registration of a dealer under section 14;
- (f) the accounts to be maintained and the returns to be 20 submitted by public religious institutions under section 15;
- (g) the forms of declarations under sections 16 and 17 and the particulars regarding gold or persons from whom or in whose favour it was acquired or parted with, as the case may be;
- (h) the forms in which, and the period within which, re- 25 turns as to gold shall be submitted by dealers and refiners under section 19;
- (i) the forms in which accounts shall be kept by dealers and refiners under section 20 and the manner of keeping such accounts; 30
- (j) the conditions and restrictions subject to which persons may be permitted to buy gold and the accounts and returns to be furnished by such persons;
- (k) the precautions to be taken against the use of any conveyance or animal as a means of transport or in the carriage of 35 gold in contravention of the provisions of this Act;

I of 1872.

(l) the fees payable in respect of appeals and applications for revision under this Act;

(m) the manner of publication of notices and orders under this Act;

5 (n) any other matter which has to be or may be prescribed.

(3) In making rules under this section, the Central Government may provide that any person committing any breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding two thousand rupees.

10 (4) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it
15 is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
20

43. (1) As from the commencement of this Act, the provisions of Repeal Part XIIA of the Defence of India Rules, 1962, shall stand repealed and saved and upon such repeal, section 6 of the General Clauses Act, 1897, shall apply as if the said Part were a Central Act.

10 of 1897. 25 (2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897, anything done or any action taken (including any application made to, or any order made or licence issued by, the Gold Board, Administrator or other competent authority) under or in pursuance of the provisions
30 of Part XIIA of the Defence of India Rules, 1962, shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act.

STATEMENT OF OBJECTS AND REASONS

The Gold Control Rules were promulgated on the 10th January, 1963, as Part XIIA of the Defence of India Rules. These rules regulate the manufacture of ornaments and other articles of gold, the activities of refiners and dealers, require owners of non-ornament gold to make declarations regarding gold possessed by them and place certain restrictions on the transfer of gold. In the economic and financial interests of the community, it is necessary that the provisions relating to control of gold should be placed on a permanent footing by an Act of Parliament.

2. In order to achieve the objective of gold control, it is essential to strengthen the scheme in certain respects. While declarations were required from individuals possessing gold (other than ornaments), in excess of 50 grammes, there was no provision for calling for any declarations in respect of ornaments held by them. Accordingly, provision has been made for conferring on Government the power to call for declarations, by general or special order, from any person or class of persons, in respect of holdings of ornaments in excess of limits that may be specified.

3. At present, only dealers in gold, who are registered under any law with respect to sales tax, are required to be licensed. For the other dealers, licensing is optional. The goldsmiths who are working on their own are, however, required to obtain certificates to enable them to remake ornaments of over 14 carat purity. It is considered necessary that all categories and types of dealers in gold, who are not licensed, should be registered so as to bring them within the scope of the Bill.

4. Some difficulty has been experienced by public religious institutions, which receive gold as offerings and sell them. To meet their special requirements, suitable provision has been made placing them on a separate footing as distinguished from dealers and private individuals.

5. The notes on clauses explain in detail the changes which are proposed to be made in the Bill as compared with the provisions in Part XIIA of the Defence of India Rules.

NEW DELHI;

Dated the 16th November, 1963.

T. T. KRISHNAMACHARI.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA**

[Copy of letter No. 1/82/63-GC, dated the 20th November, 1963 from Shri T. T. Krishnamachari, Minister of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the Gold (Control) Bill, 1963, to provide, in the economic and financial interests of the community, for the control of the production, supply, distribution, use and possession of, and business in, gold and ornaments and other articles of gold and for matters connected therewith, recommends under clause (3) of article 117 of the Constitution the consideration of the Bill in the Lok Sabha.

*Notes on clauses***CHAPTER I**
PRELIMINARY

Clause 2.—The definitions generally follow the existing definitions in Part XIIA of the Defence of India Rules. In the definition of "dealer", however, the Reserve Bank of India, the State Bank of India, subsidiary banks as defined in the State Bank of India (Subsidiary Banks) Act, 1959, and banking companies as defined in the Banking Companies Act, 1949, have been excluded from its scope.

CHAPTER II**CONTROL OF BUSINESS IN GOLD**

Clauses 3 to 6.—These provisions are generally based on the corresponding provisions of the Defence of India Rules, namely, rules 126B, 126C, 126H and 126D respectively. In clause 6, provision has been made to clarify the position regarding a pawnee who sells gold on the failure of the pawnor to redeem it.

CHAPTER III**LICENSING OF DEALERS AND REFINERS AND CERTIFICATION OF
GOLDSMITHS**

Clauses 7 to 10.—These relate to the licensing of dealers and refiners and the circumstances in which their licences may be cancelled or surrendered and are based on the provisions of rule 126E of the Defence of India Rules. It has been provided that before an application for licence is rejected, the applicant should be given a reasonable opportunity for showing cause against the rejection.

Clause 11.—Under sub-rule (10) of rule 126E, dealers as well as refiners, who for any reason discontinue their business, have to deposit the gold in their possession with the Administrator and thereupon the Central Government will purchase it at the international price of fifty-three rupees and fifty-eight naye paise per ten grammes of gold of a fineness of 0.995 or more. It is now proposed to modify this provision so as to give to such dealers and refiners the facility of disposing of such gold to any licensed dealer or refiner.

Clause 12.—This corresponds to sub-rule (11) of rule 126E of the Defence of India Rules.

Clause 13.—This corresponds to rule 126HH (relating to certified goldsmiths) of the Defence of India Rules. As in the case of licences for dealers, provision has been made for giving opportunity to the applicant to show cause against rejection of the application for a certificate.

Clause 14.—This is a new provision intended to register dealers other than licensed dealers and certified goldsmiths so that all categories of dealers may come within the scope of gold control.

Clause 15.—This is a new provision designed to accord a special position to public religious institutions so that they may not be hampered by the restrictions which would otherwise apply to them in accordance with the definition of the term “dealer”.

CHAPTER IV

DECLARATION OF GOLD

Clause 16.—This corresponds to rule 126 I (relating to declarations as to gold other than ornaments) of the Defence of India Rules.

Clause 17.—This is a new provision intended to confer on Government the power to call for declarations in respect of ornaments owned by any person or class of persons in excess of such limits as may be specified by the issue of a general or special order.

CHAPTER V

ADMINISTRATOR

Clause 18.—This corresponds to rule 126J of the Defence of India Rules and provides for the appointment and functions of the Administrator.

CHAPTER VI

RETURNS AND ACCOUNTS

Clauses 19 and 20.—These correspond to rules 126F and 126G of the Defence of India Rules. It is, however, proposed to lay down the details regarding the returns and accounts to be furnished by different categories of dealers, by framing rules for the purpose.

CHAPTER VII

MISCELLANEOUS

The provisions of this Chapter (clauses 21 to 41) follow the provisions of rules 126K to 126Z of the Defence of India Rules subject to certain modifications. The more important of them are explained below.

Clause 26.—This corresponds to rule 126L. Provision has, however, been made for the seizure of books of accounts, returns and other documents relating to any gold involved in the contravention of the law from the premises of persons other than dealers and refiners as well.

Clauses 1 and 30.—These correspond to sub-rule (16) of rule 126L, and rule 126SM. Provision has been made for appeals not only against adjudications of confiscation or penalty but also against other decisions and orders. It has further been provided that persons filing appeals should deposit in advance the penalties adjudged unless specific relaxation in this behalf is granted by the appellate authority.

Clause 31.—This corresponds to rule 126P. For minor infringements, the existing provision for imposition of a sentence of imprisonment and/or fine has been repealed by a provision for penalty to be adjudged departmentally.

Clause 43.—This provides for the repeal of Part XII-A (relating to gold control) of the Defence of India Rules and contains the necessary provision for saving action taken under the provisions of that Part.

FINANCIAL MEMORANDUM

The Bill seeks to prohibit the manufacture of articles of gold in certain cases and to impose restrictions on the making of ornaments and other articles, possession and sale of gold, etc. It also provides for the licensing of refiners and licensing or certification of dealers and goldsmiths. Other provisions made in the Bill include the furnishing of declarations and returns, and the maintenance of accounts by various classes of persons, dealers, refiners, public religious institutions, etc.

2. Enforcement of these measures will involve extra work and necessitate the employment of some additional staff. The Bill provides for the appointment of an Administrator and also contemplates authorisation of other officers to exercise some of the powers of the Administrator.

3. The expenditure on account of additional staff together with incidental expenses on administration is estimated at about Rs. 29 lakhs per annum.

REQUIREMENT OF PERSONNEL AND FINANCE

Annual emoluments.

<i>Headquarters</i>		Rs.
Administrator	1	43,000
Deputy Secretary	1	18,000
Under Secretary	1	14,500
Ministerial Staff	20	74,000
Class IV Staff	8	10,000
<i>Regional Office</i>		
Deputy Secretary	1	18,000
Research Officers	2	20,000
Ministerial Staff	22	99,500
Class IV Staff	4	6,500
<i>State Gold Control Officers</i>		
Gold Control Officers	16	1,92,000
Office Establishment	100	2,00,000
<i>Enforcement Staff in the Central Excise Collectorates.</i>		
(mainly on Gold Control)		
Deputy Collectors	4	35,500
Supdts. Class II	15	1,06,000
Dy. Supdts. (Executive)	48	2,77,000
Inspectors	209	7,83,000
Sub-Inspectors	78	1,43,000
Ministerial Staff	98	2,44,000
Incidental expenses		6,00,000
	Total	*28,84,000

* As a result of the 1963 Budgetary changes, some staff is surplus in Central Excise Collectorates and is available for adjustment against the Gold Control requirement. After such adjustment, the net additional cost of the new posts will be Rs. 21.19 lakhs only.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 42 of the Bill empowers the Central Government to make rules to carry out the purposes of the Act. The matters in respect of which rules may be made are specified in sub-clause (2) and they relate, among others, to the additional particulars to be stamped on pieces of primary gold, the conditions subject to which a pawnee may sell gold pledged with him, the forms of applications for grant or renewal of licences and certificates, the fees payable in respect of such applications, the forms of such licences and certificates, the forms of declarations to be made by persons holding gold (other than ornaments) or ornaments, and the forms of accounts and returns to be submitted by dealers, refiners and public religious institutions. These are matters of procedure or administrative detail. The delegation of legislative power is thus of a normal character.

BILL No. 48 OF 1963

a Bill further to amend the Reserve Bank of India Act, 1934, the Banking Companies Act, 1949 and the State Bank of India (Subsidiary Banks) Act, 1959.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

CHAPTER I

Short title
and com-
mence-
ment.

1. (1) This Act may be called the Banking Laws (Miscellaneous Provisions) Act, 1963. 5

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

CHAPTER II 10

AMENDMENT OF THE RESERVE BANK OF INDIA ACT, 1934

Amend-
ment of
section 34

2. In section 34 of the Reserve Bank of India Act, 1934 (hereinafter in this Chapter referred to as the principal Act), sub-section (2) shall be omitted. 2 of 1934.

Omission
of section
36.

3. Section 36 of the principal Act shall be omitted. 15

4. In section 38 of the principal Act, the words and figures "to Amend-
re-issue any rupee coin delivered under section 36 nor" and the ment of
words "or by delivery to the Central Government under that section 38.
section" shall be omitted.

5. After Chapter IIIA of the principal Act, the following Chapter Insertion
and sections shall be inserted, namely:— of new
Chapter
after
Chap-
ter IIIA.

"CHAPTER IIIB

PROVISIONS RELATING TO NON-BANKING INSTITUTIONS RECEIVING DEPOSITS AND FINANCIAL INSTITUTIONS

10 45H. The provisions of this Chapter shall not apply to the Chapter
State Bank or a banking company as defined in section 5 of the IIIB not to
Banking Companies Act, 1949 or a banking institution notified apply in
under section 51 of that Act. certain
cases.

15 Provided that for the purposes of this Chapter, the Madras Industrial Investment Corporation Limited shall not be deemed to be a banking company.

15 45I. In this Chapter, unless the context otherwise re- Definitions.
requires,—

20 1 of 1956. (a) "company" means a company as defined in section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of section 591 of that Act;

(b) "corporation" means a corporation incorporated by an Act of any legislature;

25 (c) "financial institution" means any non-banking institution—

(i) which carries on as its business or part of its business the financing, whether by way of making loans or advances or otherwise, of trade, industry, commerce or agriculture; or

30 (ii) which carries on as its business or part of its business the acquisition of shares, stock, bonds, debentures or debenture stock or securities issued by a Government or local authority or any other assets; or

35 (iii) which carries on as its principal business hire-purchase transactions or the financing of such transactions;

(d) "firm" has the same meaning as in the Indian Partnership Act, 1932;

(e) "non-banking institution" means a company, corporation, or firm.

Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money.

45J. The Bank may, if it considers necessary in the public interest so to do, by general or special order,—

(a) regulate or prohibit the issue by any non-banking 5 institution of any prospectus or advertisement soliciting deposits of money from the public; and

(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued. 10

Power of Bank to collect information

45K. (1) The Bank may at any time direct that every non-banking institution shall furnish to the Bank, in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified by 15 the Bank by general or special order.

(2) Without prejudice to the generality of the power vested in the Bank under sub-section (1), the statements, information or particulars to be furnished under sub-section (1) may relate to all or any of the following matters, namely, the amount of 20 the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, they are received.

(3) The Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions 25 either generally or to any non-banking institution or group of non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received. 30

(4) If any non-banking institution fails to comply with any direction given by the Bank under sub-section (3), the Bank may prohibit the acceptance of deposits by that non-banking institution.

(5) If any question arises whether any amount borrowed 35 or proposed to be borrowed by a non-banking institution is or is not a deposit, it shall be referred to the Bank whose decision thereon shall be final.

5 (6) Every non-banking institution receiving deposits shall, if so required by the Bank and within such time as the Bank may specify, cause to be sent at the cost of the non-banking institution a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the non-banking institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the Bank.

10 45L. (1) If the Bank is satisfied that for the purpose of Power of enabling it to regulate the credit system of the country to its Bank to call for advantage it is necessary so to do, it may— information from financial institutions and to give directions.

15 (a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to the Bank in such form, at such intervals and within such time, such statements, information or particulars relating to the business of such financial institutions or institution, as may be specified by the Bank by general or special order;

20 (b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution.

25 (2) Without prejudice to the generality of the power vested in the Bank under clause (a) of sub-section (1), the statements, information or particulars to be furnished by a financial institution may relate to all or any of the following matters, namely, the paid-up capital, reserves or other liabilities, the investments whether in Government securities or otherwise, the persons to whom, and the purposes and periods for which, finance is provided and the terms and conditions, including the rates of interest, on which it is provided.

30 (3) In issuing directions to any financial institution under clause (b) of sub-section (1), the Bank shall have due regard to the conditions in which, and the objects for which, the institution has been established, its statutory responsibilities, if any, and the effect the business of such financial institution is likely to have on trends in the money and capital markets.

35 45M. It shall be the duty of every non-banking institution to furnish the statements, information or particulars called for, and to comply with any direction given to it, under the provisions of this Chapter.

Duty of non-banking institutions to furnish statements, etc., required by Bank

Inspection.

45N. (1) The Bank may, at any time, for the purpose of verifying the correctness or completeness of any statement, information or particulars furnished to it by a non-banking institution or for the purpose of obtaining any information or particulars which a non-banking institution has failed to furnish on its being called upon to do so, cause an inspection to be made by one or more of its officers or employees or other persons (hereinafter in this section referred to as the inspecting authority), of any such institution and its books and accounts. 5

(2) It shall be the duty of every director or member of any committee or other body for the time being vested with the management of the affairs of the non-banking institution or other officer or employee thereof to produce to the inspecting authority all such books, accounts and other documents in his custody or power and to furnish that authority with any statements and information relating to the business of the institution as that authority may require of him, within such time as may be specified by that authority. 10

(3) The inspecting authority may examine on oath any director or member of any committee or body for the time being vested with the management of the affairs of the non-banking institution or other officer or employee thereof, in relation to its business and may administer an oath accordingly. 20

Penalties.

45O. (1) Whoever in any return, statement or information required or furnished by or under or for the purposes of any provision of this Chapter, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. 25 30

(2) If any person fails to produce any book, account or other document or to furnish any statement, information or particulars, which under this Chapter it is his duty to produce or furnish, or to answer any question relating to the business of a non-banking institution which he is asked by the inspecting authority under this Chapter, he shall be punishable with fine which may extend to two thousand rupees in respect of each offence, and, if he persists in such refusal, with a further fine which may extend to one hundred rupees for everyday during which the offence continues. 35 40

(3) If any non-banking institution—

(a) receives any deposits in contravention of any direction given to it under this Chapter; or

5 (b) issues any prospectus or advertisement otherwise than in accordance with any order made under section 45J; or

(c) fails to comply with the provisions of sub-section

10 (6) of section 45K or with the directions issued under sub-section (3) of that section or clause (b) of sub-section (1) of section 45L,

every director or member of any committee or other body for the time being vested with the management of the affairs of the non-banking institution, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be punishable with fine which may extend—

15 (a) in the case of a contravention falling under clause (a), to twice the amount of the deposits received;

(b) in the case of a contravention falling under clause (b), to twice the amount of the deposits called for by the prospectus or advertisement; and

(c) in any other case, to two thousand rupees.

20 45P. No court shall take cognisance of any offence punishable under section 45O except upon a complaint in writing made by an officer of the Bank, generally or specially authorised in writing in this behalf by the Bank, and no court inferior to that of a presidency magistrate or a magistrate of the first class shall try any such offence.

25 45Q. The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

ance of offence.

Chapter IIIB to over-ride other laws.

CHAPTER III

AMENDMENT OF THE BANKING COMPANIES ACT, 1949

30 35 6. In section 5 of the Banking Companies Act, 1949 (hereinafter referred to as the principal Act), for the brackets, figure and words “(1) In this Act”, the words “In this Act” shall be substituted.

Substitution of new section for section 7.

7. For section 7 of the principal Act, the following section shall be substituted, namely:—

Use of words "bank", "banker", "banking", of banking Company.

"7. (1) No company other than a banking company shall use as part of its name any of the words 'bank', 'banker' or 'banking' and no company shall carry on the business of banking in India 5 unless it uses as part of its name at least one of such words.

(2) No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words 'bank', 'banking' or 'banking company'.

(3) Nothing in this section shall apply to—

10

(a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19, whose name indicates that it is a subsidiary of that banking company;

(b) any association of banks formed for the protection 15 of their mutual interests and registered under section 25 of the Companies Act, 1956.".

1 of 1956.

Amend-
ment of
section 10.

8. In section 10 of the principal Act,—

(a) in sub-section (1), in sub-clause (iii) of clause (c)—

(i) for the words "who has a contract with the company 20 for its management", the words "whose term of office as a person managing the company is" shall be substituted;

(ii) for the first proviso, the following provisos shall be substituted, namely:—

"Provided that the term of office of any such person 25 may be renewed or extended by further periods not exceeding five years on each occasion subject to the condition that such renewal or extension shall not be sanctioned earlier than two years from the date on which it is to come into force: 30

Provided also that where the term of office of such person is for an indefinite period, such term, unless it otherwise comes to an end earlier, shall come to an end immediately on the expiry of five years from the date of his appointment or on the expiry of three months 35 from the date of commencement of section 8 of the Banking Laws (Miscellaneous Provisions) Act, 1963, whichever is later.";

(b) sub-sections (3), (4) and (5) shall be omitted.

9. In section 12 of the principal Act, in sub-section (2), for the words "in excess of five per cent.", the words "in excess of one per cent." shall be substituted. Amend-
ment of
section 12.

10. In section 18 of the principal Act, in clause (b) of the *Explanation*, the brackets and word "(Private)" shall be omitted. Amend-
ment of
section 18.

11. In section 20 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Notwithstanding anything to the contrary contained in section 77 of the Companies Act, 1956, no banking company shall—

(a) make any loans or advances on the security of its own shares; or

(b) grant unsecured loans or advances—

(i) to any of its directors; or

(ii) to firms or private companies in which any of its directors is interested as partner or managing agent or guarantor or to individuals in cases where any of its directors is a guarantor; or

(iii) to any public company in which the chairman of the board of directors of the banking company (where the articles of association of the banking company provide for the appointment of a chairman for a fixed term) is interested as chairman or managing director of the public company or as director or partner of the managing agent of such company.”;

15 (b) in sub-section (2), for the words "granted by it to companies in which it or", the words, brackets and figure "granted by it to companies in cases (other than those in which the banking company is prohibited under sub-section (1) to make unsecured loans and advances) in which" shall be substituted.

20 12. After section 20 of the principal Act, the following section shall be inserted, namely:— Insertion
of new
section
after sec-
tion 20.

25 35 “20A. (1) Notwithstanding anything to the contrary contained in section 293 of the Companies Act, 1956, a banking company shall not, except with the prior approval of the Reserve Bank, remit in whole or in part any debt due to it by— Restric-
tions
on power
to remit
debts.

(a) any of its directors, or

(b) any firm or company in which any of its directors is interested as director, partner, managing agent or guarantor, or

(c) any individual if any of its directors is his partner or guarantor. 5

(2) Any remission made in contravention of the provisions of sub-section (1) shall be void and of no effect.”.

**Amend-
ment of
section 21.**

13. In section 21 of the principal Act,—

(a) in sub-section (1), after the words “public interest”, the words “or in the interests of depositors” shall be inserted; 10

(b) in sub-section (2), for the words beginning with “as to the purposes” and ending with “directions as so given.”, the following shall be substituted, namely:—

“as to—

(a) the purposes for which advances may or may not be made, 15

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual, 20

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and 25

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.”; 30

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Every banking company shall be bound to comply with any directions given to it under this section.”. 35

14. In section 26 of the principal Act, the words "giving particulars of the deposits standing to the credit of each such account" shall be omitted. Amend-
ment of
section 26.

15. In section 30 of the principal Act, in clause (d) of sub-section (3), for the words "of profit and loss", the words "of profit or loss" shall be substituted. Amend-
ment of
section 30.

16. In section 34A of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— Amend-
ment of
section

(3) For the purposes of this section, "banking company" includes the Reserve Bank, the State Bank of India and any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959.". 34A.

17. In section 35 of the principal Act, in sub-section (2) and in sub-section (3), after the words "director or other officer", the words "or employee" shall be inserted. Amend-
ment of
section 35.

18. After Part II of the principal Act, the following Part and sections shall be inserted, namely:— Insertion
of new
Part after
Part II.

"PART IIA

CONTROL OVER MANAGEMENT

20 36AA. (1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any director, chief executive officer (by whatever name called) or other officer or employee of the banking company. Power of
Reserve
Bank to
remove
managerial
and other
persons
from office.

30 (2) No order under sub-section (1) shall be made unless the director or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Reserve Bank against the proposed order:

35 Provided that it shall not be necessary to give any such opportunity if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors:

(3) Where any order is made in respect of a director or chief executive officer or other officer or employee of a banking

company under sub-section (1), he shall cease to be a director or, as the case may be, chief executive officer or other officer or employee of the banking company and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of, any banking company for such period not exceeding five years as may be specified in the order.

(4) If any person in respect of whom an order is made by the Reserve Bank under sub-section (1) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during 10 which such contravention continues.

(5) Where an order under sub-section (1) has been made, the Reserve Bank, may, by order in writing, appoint a suitable person in place of the director or chief executive officer or other officer or employee who has been removed from his office under 15 that sub-section, with effect from such date as may be specified in the order.

(6) Any person appointed as director or chief executive officer or other officer or employee under this section, shall—

(a) hold office during the pleasure of the Reserve Bank 20 and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) not incur any obligation or liability by reason only of his being a director or chief executive officer or other 25 officer or employee or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

(7) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the re- 30 removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

Power of
Reserve
Bank to
appoint
additional
directors.

36AB. (1) If the Reserve Bank is of opinion that in the interests of the banking company or its depositors it is necessary 35 so to do, it may, from time to time by order in writing, appoint, with effect from such date as may be specified in the order, not more than five persons to hold office as additional directors of the banking company.

5 (2) Any person appointed as additional director in pursuance of this section—

10 (a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

15 (b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

20 (c) shall not be required to hold qualification-shares in the banking company.

25 (3) For the purpose of reckoning any proportion of the total number of directors of the banking company, any additional director appointed under this section shall not be taken into account.

36AC. Any appointment or removal of a director, chief executive officer or other officer or employee in pursuance of section 36AA or section 36AB shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force or in any contract or any other instrument".

Part II A
to over-
ride other
laws.

1 of 1958.

20

19. In section 44A of the principal Act,—

Amend-
ment of
section
44A.

25 (a) sub-section (5), shall be omitted;

(b) in sub-section (6), for the words "the terms of the order sanctioning the scheme", the words "the provisions of the scheme as sanctioned" shall be substituted.

30 (c) after sub-section (6), the following sub-sections shall be inserted, namely:—

35

"(6A) Where a scheme of amalgamation is sanctioned by the Reserve Bank under the provisions of this section, the Reserve Bank may, by a further order in writing, direct that on such date as may be specified therein the banking company (hereinafter in this section referred as the amalgamated banking company) which by reason of the amalgamation will cease to function, shall stand dissolved and any such direction shall take effect notwithstanding anything to the contrary contained in any other law.

(6B) Where the Reserve Bank directs a dissolution of the amalgamated banking company, it shall transmit a copy of the order directing such dissolution to the Registrar before whom the banking company has been registered and on receipt of such order the Registrar shall strike off the name **5** of the company.

(6C) An order under sub-section (4) whether made before or after the commencement of section 19 of the Banking Laws (Miscellaneous Provisions) Act, 1963 shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with, and a copy of the said order certified in writing by an officer of the Reserve Bank to be a true copy of such order and a copy of the scheme certified in the like manner to be a true copy thereof shall, in all legal proceedings, be admitted as evidence to the same extent as the original order and the original scheme.”.

Amend-
ment of
section
44B.

20. In section 44B of the principal Act, in sub-section (1), for the words “unless the compromise or arrangement”, the words “or **20** sanction any modification in any such compromise or arrangement unless the compromise or arrangement or modification, as the case may be”, shall be substituted.

Amend-
ment of
section 45.

21. In section 45 of the principal Act, after sub-section (7), the following sub-section shall be inserted, namely:—

“(7A) The sanction accorded by the Central Government **25** under sub-section (7), whether before or after the commencement of section 21 of the Banking Laws (Miscellaneous Provisions) Act, 1963, shall be conclusive evidence that all the requirements of this section relating to reconstruction, or, as the case may be, amalgamation have been complied with and a copy **30** of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings, be admitted as evidence to the same extent as the original scheme.”.

Amend-
ment of
section
45F.

22. In section 45F of the principal Act,—

35

(i) in sub-section (1), for the words “proceedings by or against the banking company”, the words “legal proceedings” shall be substituted;

(ii) in sub-section (2)—

(a) after the word “directors”, the words “officers and **40** other employees” shall be inserted, and

(b) the words, brackets and figures "before the commencement of the Banking Companies (Amendment) Act, 1953" shall be omitted.

23. In section 45S of the principal Act,—

Amend-
ment of
section
45S.

5 (a) in sub-section (1)—

(i) the words "which has been ordered to be wound up" shall be omitted;

10 (ii) for the words beginning with "take possession of such property" and ending with "special officer", the following shall be substituted, namely:—

"(a) take possession of such property, books of accounts or other documents, and

(b) forward them to the official liquidator or the special officer.";

15 (b) for sub-section (2), the following sub-sections shall be substituted, namely:—

20 (2) Where any such property and effects are in the possession of the Chief Presidency Magistrate or the District Magistrate, as the case may be, such Magistrate shall, on request in writing being made to him by the official liquidator or the special officer referred to in sub-section (1), sell such property and effects and forward the net proceeds of the sale to the official liquidator or the special officer:

25 Provided that such sale shall, as far as practicable, be effected by public auction.

30 (3) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(4) No act of the Chief Presidency Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority".

Amend-
ment of
section
45T.

24. In section 45T of the principal Act,—

(a) in sub-section (3), for the words “in the same manner as an arrear of land revenue”, the following shall be substituted, namely:—

“by the liquidator in the same manner as an arrear of land revenue and for the purpose of such recovery the liquidator may forward to the Collector within whose jurisdiction the property of the person against whom any order or decision of the High Court has been made is situate, a certificate under his signature specifying the amount so due and to the person by whom it is payable”;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) On receipt of a certificate under sub-section (3), the Collector shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to any other powers of the Collector, he shall, for the purposes of recovering the said amount, have all the powers, which, under the Code of Civil Procedure, 1908, a civil court has for the purpose of the recovery of an amount due under a decree.”.

Amend-
ment of
section 46.

25. In section 46 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) If any other provision of this Act is contravened or if any default is made in complying with any requirement of this Act or of any order, rule or direction made or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to two thousand rupees, and where a contravention or default is a continuing one, with a further fine which may extend to one hundred rupees for every day during which the contravention or default continues.

(5) Where a contravention or default has been committed by a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the contravention or default was committed without his knowledge or that he exercised all due diligence to prevent the contravention or default.

(6) Notwithstanding anything contained in sub-section (5), where a contravention or default has been committed by a company, and it is proved that the same was committed with the consent or connivance of, or is attributable to any gross negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention or default and shall be liable to be proceeded against and punished accordingly.

15 *Explanation.*—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”.

20 26. In section 47 of the principal Act, after the words “punishable under”, the words, brackets, figures and letters “sub-section (4) of section 36AA or” shall be inserted. Amend-
ment of section 47.

27. In section 49 of the principal Act, for the figures “384”, the figures and letter “388A” shall be substituted. Amend-
ment of section 49.

25 28. In section 49A of the principal Act, for the words “banking institution notified by the Central Government in this behalf”, the words “banking institution, firm or other person notified by the Central Government in this behalf on the recommendation of the Reserve Bank” shall be substituted. Amend-
ment of section 49A.

30 29. In section 53 of the principal Act, after the words “any banking company”, the words “or institution” shall be inserted. Amend-
ment of section 53.

CHAPTER IV

AMENDMENT OF THE STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959

35 30. In section 19 of the State Bank of India (Subsidiary Banks) Act, 1959, in sub-section (2), for the words “in excess of five per cent”, the words “in excess of one per cent” shall be substituted. Amend-
ment of section 19.

STATEMENT OF OBJECTS AND REASONS

The existing enactments relating to banks do not provide for any control over companies or institutions, which, although they are not treated as banks, accept deposits from the general public or carry on other business which is allied to banking. For ensuring more effective supervision and management of the monetary and credit system by the Reserve Bank, it is desirable that the Reserve Bank should be enabled to regulate the conditions on which deposits may be accepted by these non-banking companies or institutions. The Reserve Bank should also be empowered to give to any financial institution or institutions directions in respect of matters, in which the Reserve Bank, as the central banking institution of the country, may be interested from the point of view of the control of credit policy. The Reserve Bank's powers in relation to commercial banks should also be enhanced and extended in certain directions, so as to provide for stricter supervision of the operations and working of such banks. The Bill seeks to achieve these objects.

2. Opportunity is being taken to omit certain provisions of the Reserve Bank of India Act, which are no longer necessary, and to bring out more clearly the intention underlying certain provisions of the Banking Companies Act.

3. The provisions of the Bill are explained in detail in the notes on the various clauses.

T. T. KRISHNAMACHARI.

NEW DELHI;

The 19th November, 1963.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. F. 16(3)-BC/63, dated the 20th November, 1963 from Shri T. T. Krishnamachari, Minister of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Banking Laws (Miscellaneous Provisions) Bill, 1963, recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 of the Constitution.

Notes on clauses

Clause 2.—According to section 34 of the Reserve Bank of India Act, currency notes issued by Government and taken over by the Bank, or bank notes issued by the Bank, if they are not presented for payment within forty years after the date of issue, are deemed to have been lost and to have gone out of circulation. The assets held against such notes are then resumed. If subsequently it is proved that any note has not really been lost and has to be honoured, the claim is settled *ad-hoc*. The advantages of this procedure, which provides for assets being resumed in certain circumstances, are not commensurate with the labour and expenditure involved in maintaining detailed statistics for the purpose of ascertaining when any notes are due to be written off from circulation. It is, therefore, proposed, after an examination of the practice and legal requirements in other countries, to delete the provision in section 34, requiring notes to be treated as not being in effective circulation if they are not presented for payment for a period of forty years or more. The net loss, if any, to Government or to the Reserve Bank as a result of the proposed amendment, after taking into account the saving in expenditure as a result of the discontinuance of the system of maintaining detailed statistics, is not expected to be substantial.

Clauses 3 and 4.—When the Reserve Bank was established, it was considered desirable to provide for the Bank's assets, in the form of rupee coins (which technically include rupee notes) to be maintained at certain minimum levels related to the total note issue. Section 36 of the Reserve Bank of India Act accordingly provides that the value of rupee coins including one rupee notes should not be less than Rs. 50 crores or one-sixth of the total assets held in the Issue Department, whichever may be higher. In existing conditions, it is not considered necessary to prescribe any statutory minimum for assets held in the form of rupee coins including rupee notes. It is, therefore, proposed to delete section 36 and to make certain consequential amendments in section 38.

Clause 5.—A new Chapter is proposed to be introduced in the Reserve Bank of India Act for enabling that bank to obtain returns and information from (a) certain financial institutions, namely, firms, companies or other bodies corporate which are financing trade, industry, commerce or agriculture, or are carrying on as a part of their business the acquisition of shares, stocks, bonds, debentures

or other securities, or are engaged mainly in the financing of hire-purchase transactions and (b) non-banking institutions accepting deposits from members of the general public. The objects in view are to provide for—

(i) the supervision and control of the financial institutions mentioned above in the interests of better or more effective control of credit, and

(ii) the regulation of the business of acceptance of deposits by these and other non-banking institutions, in the public interest.

The Reserve Bank will be empowered to provide, by general or special order, for the forms in which returns and information are to be furnished to it, and also to give directions to any class of institutions or to any institution in particular for the purposes specified. The Reserve Bank will also be enabled to carry out inspections, where necessary, for carrying out the purposes of the new Chapter.

Clause 7.—Section 7 of the Banking Companies Act now provides that no company other than a banking company shall use as a part of its name any word or words which indicate that it carries on the business of banking. As it is desirable that a similar prohibition should also apply to firms, individuals or groups of individuals, it is proposed to amplify the existing section suitably.

Clause 8.—It is not clear whether under section 10 as it is now worded the appointment for an indefinite period of any person managing the affairs of a bank will be in order. It is proposed to make it clear that the appointment cannot in any event be in excess of five years at a time and that any renewal of the term or contract should not be sanctioned earlier than two years before the date from which it is to be renewed.

Clauses 9 and 30.—The voting rights of individual shareholders of any banking company or of any subsidiary of the State Bank are now restricted by law to five per cent of the total voting rights of all the shareholders of that company. It is proposed to reduce this figure to one per cent.

Clause 10.—As the Refinance Corporation has ceased to be a private company the word 'Private' in the reference to the company is proposed to be omitted.

Clause 11.—Sub-section (1) of section 20 now prohibits the grant of unsecured loans to directors and to private companies in which they are interested. It is proposed to amend this section so as (a) to make it clear that the question of a banking company being a partner or managing agent of any other concern does not arise and

(b) to extend the prohibition to public companies also in certain cases.

Clause 12.—It is proposed that a banking company should be prevented, without the approval of the Reserve Bank from writing off any loan due from a director, or a company, firm or individual, in which or in whom a director may be interested.

Clause 13.—It is proposed that the Reserve Bank should be enabled to give to any bank directions, in case this is considered necessary, regarding the maximum amount of the advances that may be granted to, or guarantees given on behalf of, any one company, firm or individual.

Clause 14.—Banks are required at present to submit to the Reserve Bank an annual return showing particulars of deposits which have not been operated upon for a period of ten years or more. As the total amount of such deposits all over India is only about Rs. 4 crores, it is not worthwhile to ask for detailed particulars and it is proposed to amend the section so as to provide for returns showing only the total amount of such unclaimed deposits in the case of each bank.

Clause 15.—The amendment proposed is clarificatory.

Clause 16.—Section 34A of the Banking Companies Act prevents the disclosure of information regarding the secret reserves of banking companies with offices in more than one State to tribunals or other authorities established under the Industrial Disputes Act, but provides for a suitable procedure for the supply of some essential information to such authorities through the Reserve Bank. It is proposed to extend the provisions of this section to all other banking companies.

Clause 17.—The amendment is of a clarificatory nature and is intended to make it clear that employees of a banking company who may not be classified as officers will be required to furnish information to the Reserve Bank during inspections.

Clause 18.—There is no provision, according to the law as it now stands, for the Reserve Bank to make appointments directly on its own initiative to the post of a director or chief executive officer of a banking company. The provisions regarding the removal of the chairman, director, manager or chief executive officer of a banking company are also inadequate for the purpose of enabling the Reserve Bank to control the affairs of any such banking company, as a chairman or other director, manager or chief executive officer cannot now be removed, unless he has been found by any tribunal or authority, other than a criminal court, to have contravened the provisions of any law in circumstances which make it undesirable

for him to continue to be associated with the banking company. It is now proposed that the Reserve Bank should be enabled to remove any person associated with a banking company, if it is considered necessary or desirable to do so, whether or not that person has been found to have contravened the provisions of any law, and that the Reserve Bank should be enabled to appoint any other person in place of the person who may be removed. A new section is also proposed to be included in the Act, conferring on the Reserve Bank the power to appoint not more than five additional directors in the case of any banking company.

Clause 19.—Section 44A of the Banking Companies Act now provides for the voluntary amalgamation of banking companies in accordance with schemes drawn up for this purpose and sanctioned by the Reserve Bank. The transferee banks, which have taken over other institutions under these schemes, have experienced some difficulties as a result of litigation by other parties requiring them to prove that all the requirements and formalities in connection with the amalgamation have been complied with. It is proposed to amend the section, so as to make it clear that the orders of the Reserve Bank sanctioning the schemes shall be conclusive evidence to the effect that the amalgamations have been in order.

Clause 20.—Section 44B of the Banking Companies Act now requires the concerned High Court to sanction a scheme of compromise or arrangement with the creditors only after it has been certified by the Reserve Bank as being reasonable and in order. It is proposed that modifications, if any, in the schemes should also be subject to the Reserve Bank's approval.

Clause 21.—Section 45 of the Banking Companies Act deals with the compulsory reconstruction or amalgamation of banks by the Central Government in pursuance of the policy which is being followed after the failure of the Patel Central Bank. It is proposed to amend this section so as to make it clear that an order or a certified copy of an order issued by the Central Government, reconstructing or amalgamating a banking company shall be conclusive evidence that the procedure prescribed by law has been followed and that the reconstruction or amalgamation, as the case may be, is valid.

Clause 22.—Section 45F of the Banking Companies Act now provides that in the event of the liquidation of a banking company, the entries in the documents or certified copies of the documents shall be admitted as evidence in proceedings by or against the banking company. This section is proposed to be amended, so as to make it clear that such entries shall be admissible as evidence in all legal proceedings (and not only in proceedings by or against a banking

company) and against all officers and employees (and not only against directors). The section, after it is amended, will incidentally be applicable not only in relation to banking companies which were wound up before 1953, but also in relation to other banking companies in liquidation.

Clause 23.—Section 45S of the Banking Companies Act now authorises certain officers of the State Governments to take charge of the properties and assets of banking companies in liquidation on behalf of the liquidators concerned. It is proposed to amend the section so as to empower these officers to sell the properties locally on behalf of the liquidators.

Clause 24.—Sub-section (3) of section 45T of the Banking Companies Act now provides that any amount due to a banking company may be recovered as an arrear of land revenue. It is proposed to amend this section, so as to make it clear that the liquidator concerned will be able to issue the necessary certificates and to realise the amounts.

Clause 25.—The amendment is clarificatory.

Clause 26.—Section 47 of the Banking Companies Act now provides that no court shall take cognisance of certain offences under the Act, except on a complaint by the Reserve Bank. In view of the other amendments to the Banking Companies Act, a consequential modification is proposed, inserting a reference to the proposed section 36AA.

Clause 27.—According to the Companies (Amendment) Act, 1960, the provisions relating to the termination of the appointment of a chief executive officer, after a period of five years from the 1st April, 1956 when the Companies Act, 1956 came into force are not applicable in relation to private limited companies. It is proposed to make it clear that the amendment to the Companies Act, in so far as it has the implied effect of continuing indefinitely the appointment of chief executive officer of a private limited company will not be applicable or effective in relation to private limited banking companies.

Clauses 28 and 29.—The proposed amendments are of a drafting nature.

M. N. KAUL,
Secretary.

